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BY

JOSHUA SCHOLEFIELD, Esq.,

OF THE MIDDLE TEMPLE AND NORTH-EASTERN CIRCUIT, BARRISTER-AT-LAW; AN EDITOR OF "LUMLEY'S PUBLIC HEALTH."

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PREFACE TO THE SIXTH EDITION.

About two years ago the Editor was asked to undertake the preparation of a new edition of this book. He had much hesitation in acceding to the request, for he felt strongly that he would be but a poor successor to Judge Shiress Will, who had made a lifelong study of the subject of gas and water. The learned judge was then much engaged with his judicial duties, and his lamented death occurred not long after the work of revision was commenced. The Editor was, however, fortunate in having from him many sheets of notes and suggestions for the new edition, of which, needless to say, careful use has been made.

It is believed that quite five hundred decisions have had to be considered and incorporated; and, although public general Acts have been an almost negligible quantity, much labour has been involved. Special care has been taken to refer to sections now generally inserted in Gas and Water Acts supplementing the provisions contained in the "Clauses" Acts, and references have been made to provisions of recent Acts which will serve as precedents. Developments in Gas and Water Legislation have been noticed, and great care has been bestowed upon an endeavour to make the Introduction a full and correct synopsis of the Law and Practice relating to Gas and Water Bills.

Since the date of the last edition the Metropolis Water Act, 1902, has been placed on the Statute Book, and this Act and the Boards' Charges Act of 1907 have received careful attention.

Many of the notes have been amplified.

The Editor desires to acknowledge his indebtedness to Mr. G. Eustace Cooke Yarborough who has noted up many of the statutes for him and has rendered valued assistance in many other ways; to his clerk, Mr. C. G. Engwell, who has compiled the Tables of Statutes and Cases and rendered assistance in other directions; and to the Metropolitan Water Board for permission to print the Tables which appear at pp. 580 and 640.

The Editor also desires to acknowledge his obligation to "Lumley's Public Health."

J. S.

1, King's Bench Walk. Temple,
June, 1911

M317704

TABLE OF ABBREVIATIONS.

B. of W.	Board of Works.
C. C.	County Council.
Jl. of G. L.	Journal of Gas Lighting and Water Supply.
L. B.	Local Board.
R. D. C.	Rural District Council.
R. S. C.	Rules of the Supreme Court.
S. O. C.	Standing Orders, House of Commons.
S. O. L.	Standing Orders, House of Lords.
U. D. C.	Urban District Council.

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ADDENDA.

Page 81. Thirteenth line from top, *add:* "See as to 'abandonment of a right to compensation water' and 'limitation on user of water,' *Hanbury* v. *Llanfrechfa Upper U. D. C.* (1911), 9 L. G. R. 360."

Page 182. After s. 8, *add:* "As to the meaning of the words 'control or management,' see *Redhill Gas Co.* v. *Reigate R. D. C.* (1911), 75 J. P. 358."

Page 183. After s. 9, *add:* "As to the meaning of the words 'control or management,' see *Redhill Gas Co.* v. *Reigate R. D. C.* (1911), 75 J. P. 358."

Page 396. Opposite first paragraph on page, *add as a sidenote:* "Damage caused by escape of water, further cases as to."

Page 423. Twenty-second line from bottom, *add:* "and *Jones* v. *Llanrwst U. D. C.*, [1911] 1 Ch. 393."

Page 426. Eighteenth line from bottom, *add* after *Harrington* (*Earl of*) v. *Derby Corporation*—"*Jones* v. *Llanrwst U. D. C.*, [1911] 1 Ch. 393."

Page 463. Eighth line from top, *add:* "which are summarised at p. 179, *ante.*"

Page 546. *Add* after *Bibby* v. *Metropolitan Water Board:* "This case went to the Divisional Court and it was held that the words in s. 4, *supra*, 'liable by law . . . to the payment of the water rate' refer to the time at which the water rate accrues due, and that therefore if there is a tenant in occupation at the time when the water rate accrues due, there is no right to cut off the water at a subsequent date simply because the tenant has given up possession. See [1911] 2 K. B. 74."

Page 698. *Add as a footnote* to s. 26: "The Water Board on November 6th, 1908, resolved, as to the tenancies mentioned in the section, that when the rent includes the rate for the supply of water the owner shall pay the water rate. See hereon, *Metropolitan Water Board* v. *Bibbey*, [1911] 2 K. B. 74."

Page 732. Twentieth line from top, after *Waltham Holy Cross U. D. C.* v. *Lee Conservancy Board*, *add:* "The last-mentioned case was followed in *Titterton* v. *Kingsbury Collieries, Limited* (1911), 9 L. G. R. 405."

Page 1168. Twenty-fifth line from bottom, *add:* "As to the position of mortgagees upon whom notice to treat has not been served, see *Cooke* v. *London County Council*, [1911] 1 Ch. 604."

Page 1215. At bottom of page, *add:* "As to the position of mortgagees upon whom notice to treat has not been served, see *Cooke* v. *London County Council*, [1911] 1 Ch. 604."

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GENERAL INTRODUCTION

PART I.—GAS.

Statistics relating to gas undertakings.

From the last available returns made to Parliament (issued November, 1910), it appears that a capital of about 132 millions is embarked in authorised gas undertakings in the United Kingdom. There are 501 authorised gas companies with a paid-up and borrowed capital of £90,120,962; and there are 293 local authorities who themselves undertake the supply of their districts with gas, employing £42,002,322 of borrowed capital. It also appears that there were, at the date to which the returns were made up, 35,230 miles of gas mains, and over 6 million consumers. The continued growth of the industry—in the face of the competition of the electric light—may be illustrated by the fact that while in 1883 there were 357 companies with an authorised share and loan capital of 48 millions, and in 1899, 450 companies with an authorised share and loan capital of over 69 millions, there were, in 1909, 501 companies with an authorised share and loan capital of over 108 millions; and further that, while in 1883 there were 148 local authorities supplying gas with an authorised capital of 21 millions, and in 1899—1900, 232 local authorities doing so with an authorised capital of nearly 30 millions, there were, in March, 1910, 293 local authorities doing so with an authorised capital of over 46 millions. In addition to the authorised gas undertakings, there is a large number of small undertakings supplying gas without statutory authority—and these are not included in the Parliamentary returns.

Parliamentary authority—how obtained.

Parliamentary authority for the supply of gas is obtained either by* Special Act or by a Provisional Order which is afterwards confirmed by a Public Act. A company may apply for either at their discretion unless they require wider powers than can be conferred by a Provisional Order. A local authority on the other hand must adopt the latter and simpler course, where that is open to them, as otherwise they cannot have the benefit of the Borough Funds Acts. See *post*, p. 1039.

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* In Scotland promoters who desire to obtain the powers for which in other cases a Special Act is required, must proceed by Provisional Order under the Private Legislation Procedure (Scotland) Act, 1899, instead of by Bill (although in certain cases the measure may subsequently be required to proceed as a Bill). They are not, however, precluded from availing themselves of the procedure under the Gas and Water Works Facilities Act, 1870, if they wish to do so.

Consequences which follow thereon.

Parliamentary authority having been obtained, certain consequences follow; the company obtain power to construct their works, and if need be to take defined land compulsorily, but only if authorised by a special Act; they have certain limits of supply assigned to them; they obtain power to break up the public streets for laying and repairing mains and pipes. They obtain power to charge a certain price, and are given summary remedies for recovering that price by cutting off the supply, and by warrant of distress, as well as by action in any court of competent jurisdiction. On the other hand, the company come under many obligations and restrictions; they are restricted to definite lands for the manufacture and storage of gas; they may be compelled by consumers to afford them under certain conditions a supply of gas; and such gas must be of the prescribed illuminating power, pressure, and purity; and they submit to a statutory limit of divisible profits, and, in certain events, to the auction clauses (afterwards referred to) when new capital is authorised to be raised.

Regulated monopoly.

Companies authorised by Parliament to supply gas for illuminating purposes acquire, by implication, and as a general rule, a regulated monopoly; because, so long as they do thier duty within the limits assigned to them, it is not the practice of Parliament to authorise any other company, or any local authority to compete with them as suppliers of gas for such purposes. Nevertheless, Parliament constantly authorises undertakings for lighting by means of electricity within the area of statutory gas companies and in some instances companies have been authorised to supply "power gas" within the limits of a statutory gas undertaking, but it is the practice to prohibit such companies from supplying gas for purposes of illumination See *post*, p. 26.

The general rule above referred to does not apply to electrical companies authorised by Parliament to supply electrical energy for light and power, as there are many instances of such companies having Parliamentary authority to compete with each other in the same area.

Concurrent powers.

There are a few rare instances in which Parliament has granted concurrent powers of gas supply to more than one company. No such instances have occurred in recent sessions, and where application has been made by one of the companies concerned for exclusive powers of supply, it has been the practice of Parliament to grant the application. In session 1908 the Draycott Gas Company asked for the determination of the powers of the Long Eaton Gas Company in a district in which there were concurrent powers. The district in question was within the authorised limits of the latter company, but had not been supplied with gas by them. A non-statutory undertaking was formed to supply the district with gas and subsequently obtained incorporation by the Draycott Gas Act, 1888. The Long Eaton Company in the exercise of their statutory powers entered into competition with the Draycott Company, who thereupon promoted the Bill for the purpose above referred to. The Bill was opposed by the Long Eaton Gas Company, but was duly passed. For other instances see Golborne Gas Act, 1901; Yorktown and Blackwater Gas Act 1904; Bognor Gaslight and Coke Act, 1908; Padiham U. D. C. Act, 1908; Manchester Corporation Act, 1908 (Stretford Gas); and Aldershot Gas, Water and District Lighting Act, 1909.

Locus standi of local authorities to oppose Gas Bills.

When a company seeks to obtain parliamentary authority, either by Bill or by Provisional Order, to supply gas or to raise additional capital, the municipal or other local authority of the town or district alleging that they are injuriously affected are entitled to be heard against the proposal, and where the district of a county council is alleged to be injuriously affected the county council may be admitted to be heard. See the Standing Orders of the House of Commons, Nos. 134A and 134B.

Powers of local authorities as to lighting.

Under the Public Health Act, 1875, any urban authority is authorised to contract for the supply of gas for lighting the streets, markets and public buildings in their district, and where there is no company or person authorised by Parliament to supply gas for public and private purposes, the urban authority may themselves undertake to supply gas for such purposes, or any of them, throughout the whole or any part of their district. Urban authorities are also empowered, with the sanction of the Local Government Board, to buy the undertaking of any existing gas company within their district, and the same Act authorises companies, statutory or otherwise, to sell to local authorities. See *post*, p. 822.

Urban authorities.

Rural authorities.

With regard to rural districts, the Public Health Act, 1875, s. 276 (see *post*, p. 892), enacts that the Local Government

Board may invest a rural authority with all or any of the powers of an urban authority. In pursuance of the power thus given the Local Government Board frequently invest a rural authority with power to light the streets, markets and public buildings in their district under s. 161 of the Public Health Act, 1875 (see *post*, p. 819). In rural districts, or in such parts of rural districts where the Local Government Board have not exercised the power referred to, the Lighting and Watching Act, 1833, may be adopted by the parish meeting as to the whole or part of a parish. See more fully *post*, p. 825.

Where the Lighting and Watching Act, 1833, has been adopted in any place, and that place becomes an urban district under the Public Health Act, 1875, or becomes invested with urban powers under s. 276 of that Act, then the Act of 1833 is superseded by the Act of 1875 (s. 163). See *post*, p. 824.

Gas and Water Works Facilities Acts, 1870 and 1873.

Provisional Orders.

In order to facilitate the obtaining of parliamentary powers for the supply of gas and water, the Acts known as the Gas and Water Works Facilities Acts, 1870 and 1873, were passed. Under these Acts a Provisional Order may be obtained in any district "by any company, companies, or person," therein described as undertakers. As to urban authorities, see *post*, p. 819. The Provisional Order may be obtained for one or other of the following purposes: (1) The construction, maintenance, or continuance of gasworks and the manufacture and supply of gas in any district where there is not an existing company, corporation, body of commissioners or person empowered by Act of Parliament to construct such works or to manufacture and supply gas; (2) to raise additional capital for any of these purposes; (3) to enable two or more companies or persons duly authorised to supply gas in any district or in adjoining districts to enter into agreements jointly to furnish such supply or to amalgamate their undertakings; (4) to authorise two or more companies or persons supplying gas in any district or in adjoining districts to manufacture and supply gas and to enter into agreements jointly to furnish such supply, and to amalgamate their undertakings. A Provisional Order under these Acts does not confer any power to take lands compulsorily. This results from the express terms of ss. 7 and 10 of the Act of 1870. See *post*, pp. 794, 796. Where such power is necessary to be obtained, the procedure must be by Bill.

Except as regards applications by urban authorities, Provisional Orders under these Acts are made by the Board of Trade.

Consent of local authority.

Where powers to construct gasworks are sought by individuals or companies, the consent of the local authority and also of the road authority (where there is a road authority distinct from the local authority) must be obtained; but the Board of Trade have power, after inquiry, to dispense with such consents. In rural districts the parish council, or where there is no parish council the parish meeting, is the local authority for this purpose, and the rural district council and the county council are the road authorities.

Procedure to obtain Provisional Order.

The procedure necessary for the obtaining of Provisional Orders is fully set out in the body of this Work. Certain notices have to be given and advertisements published, as in the case of proceedings to obtain Private Bills. The Provisional Order is of no effect until confirmed by Act of Parliament, and the confirmation may be opposed in Parliament by persons interested in the same way as Private Bills may be opposed. Any opposition, however, is generally fully dealt with by the Board of Trade while the Provisional Order is under the consideration of that department; and consequently only a small proportion of the Orders are opposed in Parliament.

Incorporation of Gasworks Clauses Acts, 1847 and 1871.

Whenever parliamentary authority is obtained, whether by Special Act or by Provisional Order, the Gasworks Clauses Acts, 1847 and 1871, are incorporated. Certain sections are generally excepted in the case of an urban authority, as to which see *post*, p. 797. Amongst these are the sections which require annual accounts to be kept and published in a particular form. Gas companies whose special Acts incorporate the Act of 1847 only are nevertheless subject to the Act of 1871. See the decisions on this subject, *post*, p. 220.

Separate accounts for gas and water.

Where local authorities or companies obtain authority to supply both gas and water, it is usual to require the accounts of each undertaking to be kept separate.

When urban authorities may obtain Provisional Orders.

The Public Health Act, 1875, which gives to urban authorities the powers before mentioned with reference to the lighting of their district with gas, further provides (s. 161) that where an urban authority may under that Act themselves undertake to supply gas for the whole or any part of their district, a Provisional Order authorising a gas undertaking may be obtained by such authority under and subject to the provisions of the Gas and Water Works Facilities Act, 1870, and any Act amending the same, and that in the construction of that Act the term "the undertakers" shall be deemed to include any such urban authority. There is a further provision that for the purposes of the Act of 1875 the Local Government Board shall, throughout the Act of 1870, be deemed to be substituted for the Board of Trade.

Must apply to Local Government Board.

Must proceed by Bill for powers outside their own district.

Under the powers of the section just cited, the Local Government Board have no power to authorise an urban authority to supply gas outside the limits of their district, or to purchase an existing gas undertaking which also supplies other districts; in any such case a Bill, and not a Provisional Order, is necessary. Bills of this character are of frequent occurrence. Where a local authority purchases an undertaking supplying several districts, provision is commonly inserted to enable the authorities of other districts to acquire their portion of the gasworks. This subject is more fully dealt with later. See *post*, p. 37.

Non-statutory companies.

The inconveniences to which companies not possessing the authority of Parliament are subjected when attempting to break up public streets for the purpose of laying down, renewing, or repairing their pipes, are illustrated by the various cases, which will be found in the order of their dates commencing *post*, p. 164.

Consumers entitled to demand supply of gas.

Prior to the Gasworks Clauses Act, 1871, gas companies were under no obligation to furnish a supply of gas to owners and occupiers within their limits of supply, this duty being left dependent on their interest. By that Act, however, the companies were on the one hand put under such an obligation on certain reasonable conditions, and they were on the other hand empowered to require consumers to use meters.

Limitation of profits.

Reserved fund under Act of 1847.

Under the Gasworks Clauses Act, 1847, the profits to be divided amongst the undertakers in any year are not to exceed 10 per cent. on the paid-up capital in the undertaking unless a larger dividend be at any time necessary to make up the deficiency of any previous dividend which shall have fallen short of that yearly rate. The Act of 1847 further provides that if the clear profits of the undertaking in any year amount to a larger sum than is sufficient, after making up the deficiency in the dividends of any previous year, to make a dividend at the prescribed rate, the excess beyond the sum necessary for that purpose shall from time to time be invested in Government or other securities, so as to form a reserved fund not exceeding a tenth of the nominal capital.

Objects of that fund.

The object of this reserved fund is twofold: (1) to meet any extraordinary claim certified by justices; and (2) where in any year the profits divisible shall not amount to the prescribed rate, such sum may be taken from the reserved fund as, with the actual divisible profits of the year, will enable the undertakers to make a dividend of the prescribed amount for that year. The Act contains power to gas ratepayers to apply to the court of quarter sessions (or to the sheriff in Scotland), and it provides that if it appear to the court that the profits of the undertaking for the preceding year have exceeded the prescribed rate, "the undertakers shall, in case the whole of the said reserved fund has been and then remains invested as aforesaid, and in case dividends to the amount hereinbefore limited have been paid, make such a rateable reduction in the rate for gas to be furnished by them as in the judgment of the said court or sheriff shall be proper." This power of applying to quarter sessions has practically been of little use. The provisions of ss. 30—34 of the Act of 1847 as to profits, dividend, and reserved fund, are not applicable where the sliding scale of price and dividend is adopted.

Dividends on additional capital.

Where additional capital is authorised by Parliament to be raised by an existing company, the dividend on such capital is generally limited to 7 per cent. on the ordinary, and 5 per cent. on the preference shares. See *post*, p. 203. Where borrowing powers are conferred a limit is frequently put on the interest to be paid on the borrowed capital. This is invariably the case in Provisional Orders made by the Board of Trade.

Sliding scale of price and dividend.

The sliding scale of price and dividend was first introduced by the Commercial Gas Act, 1875, which was followed by the Gas Light and Coke Company's Act, 1876, and the South Metropolitan Gas Act, 1876. Since then the sliding scale has been very generally adopted in Gas Acts all over the country.

Theory of the sliding scale.

The theory of the sliding scale is to give to the consumer a pecuniary interest in the economy and skill of the gas company; so that if, by these means, the company are enabled to make and supply gas at a lower cost, they shall on the one hand make a reduction in the price of gas to the consumer, and on the other hand be able to pay their shareholders a proportionate increase in the otherwise authorised rate of dividend; and again, if they shall make any increase in the standard price, they shall make a proportionate decrease in the rate of dividend.

Auction clause.

In the Session of 1877 a Standing Order of the House of Commons appeared requiring the introduction of the auction clause and making it competent to introduce the sliding scale of price and dividend. Since then the Standing Order has annually appeared. In 1887 that portion of it relating to the auction clause was altered so as to apply to water as well as to gas Bills. The Standing Order in its present form is as follows:

> "188. In every Bill by which an existing gas or water company is authorised to raise additional capital, provision shall be made for the offer of such capital by public auction or tender at the best price which can be obtained, unless the committee on the Bill shall report that such

> provision ought not to be required, with the reasons on which their opinion is founded.
>
> "In the case of every such Gas Bill it shall be competent to the committee so to regulate the price of the gas to be charged to consumers that any reduction of an authorised standard price shall entitle the company to make a proportionate increase of the authorised dividend, and that any increase above the standard price shall involve a proportionate decrease of dividend."

Where borrowing powers are obtained, it is frequently provided that they shall be exercised by the issue of debenture stock, created under the Companies Clauses Act, 1863, and that such debenture stock shall be put up to auction or tender.

The "Model" clause for raising additional capital includes under the nominal capital so created "any premium which may be obtained on the sale thereof."

Operation of the auction clause.

So much money therefore as is obtained under the operation of the auction clause by way of premium on the nominal or face value of the new shares or stock becomes part of the capital of the company. But the sum so added to capital bears no dividend, and inasmuch as it necessarily helps to earn profits, it thereby increases the amount of profits divisible among the holders of the dividend-bearing capital and helps to decrease the price of gas to the consumers. Hence, while on the one hand, upon the sale by auction of such new capital, the then existing shareholders are deprived of the benefit of an allocation of shares at their face value, but which have a premium value in the market, on the other hand, they make up for this in the better security of their dividend, and (with a sliding scale) in the possibility of an enhanced dividend.

The result of the operation of the sliding scale and auction clause has been in many cases to lower the price of gas to the consumer, and to increase the rate of the dividend of the gas shareholder. The extensive operation of the auction clause may be illustrated by the fact that (according to the Parliamentary Returns) while in 1882 the amount of authorised gas capital subject to the auction clause was £8,598,290, in 1899 it was £19,657,279, and in 1908 it was £34,411,082; the amounts of such capital sold by auction or tender being, in 1882, £2,065,905, in 1899, £10,031,384; and in 1908, £18,051,884; and the amount of premiums realised by the sale of shares under the auction clause being, in 1882, £957,561, in 1899, £4,301,820, and in 1908, £5,768,851.

The comparative value of these figures is, however, affected by the numerous conversions of capital into stock of a higher nominal amount during recent years.

Standard price, practice of Parliament with regard thereto.

The pivot of the sliding scale is of course the standard price. In the fixing of that, regard must be had to all the circumstances of the case. When once fixed it has not been the general practice of Parliament to alter the standard price. Attempts to induce Parliament to do so were made in the South Shields case in 1886, in the South Metropolitan case in 1881, and in the Plymouth case in 1894; but these failed. There are, however, a few cases in which in exceptional circumstances this practice has not been adhered to. For instance, in 1899, in the Lea Bridge case, a Committee of the House of Lords, presided over by Lord Camperdown, reduced the standard price from 5*s.* to 4*s.* 6*d.* The standard price of 4*s.* 6*d.* authorised by the Southend Gas Act, 1892, was reduced to 4*s.* 3*d.* by an Act of 1898, which sanctioned the conversion and consolidation of the existing capital of the company and the raising of additional capital, and by an Act of 1904, which empowered the company to raise further capital, the standard price upon which the dividends on this further capital are based was reduced to 4*s.* Sect. 9 of the Act of 1904 provides that "in the application of the provisions of s. 43 of the Act of 1898 to any capital of the company raised under the powers of this Act such provisions shall have effect as if the words 'four shillings' were substituted for the words 'four shillings and threepence.'"

Nor is the general rule necessarily followed in cases where application is made for a substantial modification of statutory obligations, *e.g.*, a reduction of the prescribed illuminating power Thus, in the case of the Metropolitan Gas Companies and in certain other cases a reduction of the standard price has been made in consideration of a reduction in the prescribed illuminating power (see *post*, pp. 15, 16). A further precedent in this direction was made by the Brighton Gas Act, 1910, which authorises the use of the Metropolitan Argand (No. 2) burner for testing the gas in lieu of the London Argand (No. 1) burner, and a House of Commons Committee (chairman, Hon. Arthur Stanley), reduced the standard price, on the opposition of the Brighton Corporation, from 3*s.* 3*d.* to 3*s.* 2*d.*, and the differential price in outlying districts was reduced from 6*d.* to 3*d.*

The sliding scale in Provisional Orders.

In Provisional Orders made by the Board of Trade under the Gas and Water Works Facilities Acts, 1870 and 1873, provision is frequently made for a maximum price in the old way, with power to the Board of Trade at any time after the expiration of three years to alter the maximum price, or to substitute a sliding scale.

Special purposes and reserve funds.

When the sliding scale is introduced, provision is also made for the formation of a special purposes fund and a new reserve fund. The formation of these is optional.

The clause authorising the creation of a special purposes fund was first introduced in the Gas Acts of 1908, and was adopted in the Model Gas Bill issued at the end of that session. This fund superseded the Insurance and Renewals Funds previously allowed by Parliament in the case of sliding scale companies.

Objects of the old insurance fund.

As to the old insurance fund, the special Acts by which it is authorised provided that if the clear profits in any year amounted to a larger sum than will be sufficient to make up the dividends payable, the excess, to the extent of 1 per cent. per annum, may be put to an insurance fund, which may accumulate at compound interest until it reaches a sum equal to one-twentieth of the paid-up capital of the company, including premiums.

This insurance fund can be resorted to from time to time "to meet any extraordinary claim, demand or charge which may at any time arise against or fall upon the company from accident, strikes or other circumstances which in the opinion of two justices due care and management could not have prevented."

Objects of the old renewals fund.

The renewals fund clause was first authorised in the Rugeley Gas Act, 1900, and was included in many of the Gas Acts passed between that date and the Session of 1908. In details the sections in the various Acts differ slightly, but they all authorise the directors of the company if they think fit to "annually appropriate out of the revenue of the company, and as part of the expenditure on revenue account," any sum not exceeding in some instances 1 per cent. and in other instances 1½ per cent. on the paid-up capital of the company, including premiums. The object of the fund is defined as being "for the purpose of providing for the renewal and repair of their gasworks, mains and pipes." Generally it is provided that the fund may be accumulated with interest until a sum equal to 10 per cent. on the paid-up capital is reached; but in some cases a definite sum has been fixed as the limit. The fund can be filled up again after having been reduced.

Objects of the special purposes fund.

The special purposes fund clause authorises the directors of a company, if they think fit, in any year to appropriate out of the revenue of the company, as part of the expenditure on revenue account, any sum not exceeding 1 per cent. of the paid-up capital, including premiums. The fund so formed is applicable to meet such charges as a chartered or incorporated accountant, being the auditor of the company, or appointed for the purpose by the Board of Trade, shall approve as being expenses incurred (*a*) by reason of accidents, strikes or circumstances which due care and management could not have prevented, or (*b*) in the replacement or removal of plant or works, other than expenses requisite for maintenance and renewal of plant and works. The fund is not at any time to exceed one-tenth of the paid-up capital, including premiums. Resort may be had to the fund, notwithstanding that the sum standing to its credit is less than the authorised maximum. The fund or any portion of it may be invested in trustee securities, or may be applied for the general purposes of the company to which capital is applicable. Any money standing to the credit of an existing insurance fund is to be transferred to the special purposes fund, and the powers of the company with regard to the insurance fund are repealed.

New reserve fund.

Besides the special purposes fund, companies having the sliding scale are authorised to form a reserve fund. Any existing "reserve or other fund of the company" will be carried to this new reserve fund. With this exception, it must be formed out of money which the company are authorised to divide. For this reason no limit is placed on the amount. The provision generally is to the effect that where in any year the company shall be entitled to pay a higher dividend than the standard rate, by reason of the price charged for gas being below the standard price, then out of the divisible profits applicable to the payment of such excess of dividend the company may set apart "such sum as they shall think fit." The fund so formed may be accumulated at compound interest. It is applicable to the payment of dividend in any year in which the clear profits of the company shall be insufficient to enable the company to pay the dividends they are authorised to pay.

No other reserve fund.

The clause in the Model Gas Bill giving power to create a reserve fund contemplates that no other fund in the nature of a reserve shall be made up. It runs: "Save as in this Act provided, no sum shall in any year be carried by the company to any reserve fund." (See Model Gas Bill, s. 14, p. 364, and *cf.* notes to s. 122 of the Companies Clauses Consolidation Act, 1845, *post*, p. 1130).

Application of excess of profits, and limitation of "carry forward."

In connection with the sliding scale, provision is always made to the effect that if the profits in any year amount to a larger sum than is sufficient for the authorised dividends, the excess, or such portion of it as is not carried to the insurance fund, shall be carried to the credit of the divisible profits for the next following year. Until recently no limitation to this "carry forward" was fixed, except in a few special cases, *e.g.*, the West Ham Gas Act, 1889, s. 14; the Crystal Palace District Gas Act, 1893, s. 15, and the Lea Bridge District Gas Act, 1899, s. 42. In the Acts of Session 1908, however, provision was made that "the sum standing to the credit of such divisible profits shall not at any time exceed the amount required to pay one year's dividend at the authorised rate," and this provision now forms part of the Model Bill (see clause 13 of that Bill, *post*, p. 364).

In a case where the existing amount carried forward was unusually large the company was allowed five years in which to bring the "carry forward" within the prescribed limits. See the Bideford Gas Order, 1909.

Variations in sliding scale provisions.

Some variation has been introduced into the sliding scale to suit the circumstances of particular cases. Thus, a standard price may be fixed, say, at 3*s*. 6*d*., with a provision that for every penny charged over that price the standard dividend shall be reduced 5*s*. per cent., and that the company shall not be entitled to anything over the standard dividend until they reduce the price of gas below 3*s*. This intermediate space (so to speak) between, say, 3*s*. 6*d*. and 3*s*. is sometimes referred to as the "neutral zone." Some instances may be given: *Tonbridge*, below 3*s*. 6*d*. for increase of dividend, and above 3*s*. 9*d*. for reduction of dividend; *Tunbridge Wells*, 3*s*. 9*d*., and outside the town 4*s*. 6*d*., but no increase of dividend till prices are reduced below 3*s*. 6*d*. and 4*s*. 3*d*. respectively; *Ipswich*, above 3*s*. 9*d*. for reducing dividends, and below 3*s*. 6*d*. for increasing dividends. Other instances are Worthing, Cradley Heath, Kingston-on-Thames, Shrewsbury, Godalming, St. Austell, Rochester, Chatham and Gillingham, Peterborough, Earby and Thornton, Derby, Stirling and Wexford. The provisions of the Crystal Palace Gas Act, 1893, and the Coatbridge Gas Order, 1902, authorising standard prices with a "neutral zone" have been amended by the South Suburban Gas Act, 1906, and the Coatbridge Gas Order, 1909, respectively, and standard prices with the ordinary sliding scale arrangements have been substituted.

"Neutral zone."

Proportionate increase and decrease.

In complying with the Standing Order the "proportionate increase" and "proportionate decrease" are generally arrived at by providing that for every penny charged in excess or in diminution of the standard price in any half year the standard rates of dividend may for such half year be reduced or increased by 5*s*. per cent. Where there are several rates of dividend payable, varying from 10 per cent. downwards, the reduction or increase authorised is usually 5*s*. in respect of 10 per cent. capital, 3*s*. 6*d*.

in respect of 7 per cent. capital, and 2*s*. 6*d*. in respect of 5 per cent. capital. The practice is not, however, uniform. The Gas Acts of 1909, for example, exhibit the following variations: In the Alliance and Dublin Gas Act (s. 16) the reduction or increase of dividend for every penny is 1*s*. 3*d*., the standard rate being 5 per cent; in the Eastbourne Gas Act (s. 23) it is 2*s*. 6*d*., with standard rates of 5 per cent. and 3½ per cent; in the Gas Light and Coke Company's Act (s. 34) it is 1*s*. 4*d*., with a standard rate of 4 per cent.; in the Heckmondwike and Liversedge Gas Act (s. 48) and the Leyland Gas Act (s. 29) it is 2*s*. 6*d*., with a standard rate of 5 per cent.; and in the Littlehampton Gas Act (s. 51) it is 5*s*., with standard rates of 10 and 7 per cent., and 2s. 6d. with a standard rate of 5 per cent.

Other variations also occur, *e.g.*, in the Bognor Gas Light and Coke Company Act, 1908 (s. 51), the slide is 1*s*. 3*d*. on A stock and 1*s*. 9*d*. on B stock, both stocks having a standard rate of 5 per cent. In the Gosport Gas Act, 1908 (s. 31), the slide is 3*s*., with a standard rate of 6 per cent., and in the Llanelly Gas Act, 1908 (s. 21), it is 2*s*. 6*d*., 1*s*. 9d., and 1*s*. 3*d*., with standard rates of 10, 7, and 5 per cent. respectively. The Draycott Gas Act, 1908 (s. 27), authorises standard prices of 4*s*. 6*d*. within a prescribed radius and 5*s*. beyond, and provides that the reduction or increase of dividend under the sliding scale shall be calculated only upon whichever of the standard prices shall have been increased or reduced, as the case may be, to the greater extent. For the present model clause, see *post*, p. 366.

Differential prices for gas.

Differential prices are very common. The parliamentary returns relating to gas undertakings in the hands respectively of local authorities and companies (Parliamentary Papers, 1910, Nos. 291, 292), will show all the various instances.

Price for power gas.

In the Gas Acts authorising the supply of gas for power provision is usually made that the charge for such gas may be fixed by agreement. See, *e.g.*, Rochester, Chatham, and Gillingham Gas Act, 1906, s. 33; Truro Gas Act, 1906, s. 74; Bromley and Crays Gas Act, 1908, s. 37; Tottenham and Edmonton Gas Act, 1906, s. 38; Aldershot Gas, Water, and District Lighting Act, 1909, s. 11, and Harrogate Gas Act, 1909, s. 31.

Conversion of loan into share capital.

Under s. 56 of the Companies Clauses Consolidation Act, 1845, it is made lawful for a company, if they think fit, and unless it be otherwise provided by the special Act, to raise money authorised to be borrowed, or any part thereof, by creating new shares instead of borrowing, or having borrowed to convert the amount borrowed into share capital. By Standing Order

No. 109 of the House of Lords, it is provided that in any Bill by which the profits of a company are limited, provision shall be made that the company shall not have power to raise the money by the Bill authorised to be borrowed on mortgage or any part thereof by the creation of shares or stock, instead of borrowing, or to convert into capital the amount borrowed under the provisions of the Bill, or any part thereof, unless in either case all dividends upon the shares or stock, whether ordinary or preferential, are limited to a rate not exceeding 5 per cent. per annum. It will be observed that this Standing Order is not retrospective, applying merely to the loan capital authorised by the particular Bill. For instances where the clause inserted has been retrospective, see Commercial Gas Act, 1875, s. 67, *post*, p. 316; Gaslight and Coke Company's Act, 1876, s. 24, *post*, p. 325; South Metropolitan Gas Act, 1876, s. 25, *post*, p. 332; Brighton and Hove Gas Act, 1893, s. 28.

Testing for illuminating power and purity.

The Act of 1871 contains elaborate provisions (ss. 28—34, and Schedule A) for the provision of a testing place where the gas may be tested for illuminating power and purity, and for the appointment by the local authority of a competent and impartial person to be a gas examiner for conducting such tests during prescribed hours of each day.

Sulphur impurities in gas.

Sect. 12 of the Act of 1871 enacts that the "gas shall as to its purity not exhibit any trace of sulphuretted hydrogen when tested" in the prescribed manner.

Provisions were formerly inserted in a considerable number of Special Acts imposing restrictions with regard to the amount of sulphur impurities in the gas in addition to the requirements in sect. 12. Consequent, however, upon the report of the Departmental Committee of 1904, and the London Gas Act, 1905, by which the metropolitan gas companies were relieved from the liabilities imposed on them as to sulphur impurities other than sulphuretted hydrogen, the Gas Companies (Removal of Sulphur Restrictions) Act, 1906, was passed for the relief of fourteen provincial gas companies from the obligations of their Special Acts with regard to sulphur impurities, and in 1907 a similar Act was passed for the relief of seven other companies. The South Suburban Gas Act, 1905, gave the like relief to the South Suburban Gas Company, and in many other cases in recent sessions the obligations in this respect contained in the earlier Acts have been repealed. For the special enactments which govern the case of the metropolis and for further notes on this subject, see *post*, pp. 63—65.

Illuminating power.

The Act of 1871 does not itself prescribe the minimum illuminating power of the gas to be supplied. This is done in the Special Act or Order relating to the undertaking.

For some years it was common to prescribe an illuminating power of not less than 15 candles, though in earlier Gas Acts the prescribed candle power was frequently lower, and in certain cases higher, than this. The metropolitan gas companies were required to supply 16-candle gas.

The introduction of the incandescent mantle, and the development of the use of gas for cooking, heating, and power during recent years have, however, so changed the conditions affecting the supply and consumption of gas that it has become generally recognised that the importance of a high illuminating power is greatly lessened, and the prescribed illuminating power is now usually 14 candles. In many cases where a higher illuminating power had been prescribed Parliament has sanctioned a reduction.

The culmination of the long controversy between the advocates of "high-grade" and "low-grade" gas occurred in connection with the introduction by the South Metropolitan Gas Company of a Bill in Session 1900 to authorise a reduction of their prescribed illuminating power from 16 candles to 15, and thereafter to 14 candles. The proposed reduction was strongly but unsuccessfully opposed by the London County Council, the Corporation of London, and other authorities before Committees of both Houses of Parliament. The Act as passed provided that on and after 1st July, 1901, the prescribed illuminating power should be 15 candles, and on and after 1st July, 1905, 14 candles. At the same time the standard price of gas was reduced by 1*d.* while the prescribed illuminating power was to be 15 candles, and by 2*d.* when the prescribed illuminating power became 14 candles. The company undertook and were required to supply their consumers, free of charge, with burners "suitable in all respects for the consumption of gas of the illuminating power prescribed by the Act."

By the Commercial Gas Act, 1902, the prescribed illuminating power of the gas supplied by the company was reduced from 16 to 14 candles. The standard price was by the same Act reduced from 3*s.* 9*d.* per 1,000 c.f. to 3*s.* 3d., 2*d.* of which was in consideration of the reduction in illuminating power.

The West Ham Gas Company also obtained, in 1902, a reduction from 16 candles to 14, the standard price being reduced by 1*d.*, namely, from 3*s.* to 2*s.* 11*d.*

The Gas Light and Coke Company continued subject to a prescribed illuminating power of 16 candles until 1908, when on the amalgamation of the undertaking of the West Ham Gas Company a reduction to 14 candles took place, with a reduction of 1*d*. in the standard price.

Many of the provincial gas undertakings have obtained similar reductions. In Session 1903 the Derby, Faversham, Maidstone, and Plymouth and Stonehouse Gas Companies obtained a reduction from 15 candles to 14. The standard price was reduced by 1*d*. at Faversham (4*s*. to 3*s*. 11*d*.), and at Maidstone (3*s*. 8*d*. to 3*s*. 7*d*.) No reduction was made in the standard price at Plymouth (2*s*. 6*d*.). The Derby Gas Company were not previously working under the sliding scale, and a standard price was fixed by the Act of 1903. In the same Session (1903) the illuminating power was reduced in the case of the Walker and Wallsend Union Gas Company from 15½ to 14 candles, and the standard price from 3*s*. 3*d*. to 3*s*. 2*d*.

In the Acts of Session 1904 the prescribed illuminating power was usually 14 candles. The Stirling Gas Company obtained a Provisional Order of the Board of Trade authorising a reduction of illuminating power from 25 to 20 candles, with a reduction of 2*d*. in the standard price (3*s*. 4*d*. to 3*s*. 2*d*.). The South Shields Gas Act, 1904, reduced the candle power from 16 to 14, with a reduction of 3*d*. in the standard price, but other considerations appear to have been involved in the decision of the Committee.

Numerous instances of similar reductions have occurred in more recent Sessions. In most cases a reduction of standard price has been made, but the practice is not uniform as regards the allowance to be made for each candle by which the illuminating power is reduced.

While the minimum illuminating power is now usually fixed at 14 candles, in a few cases, *e.g.*, Watford Gas Act, 1908, the prescribed candle power was reduced from 15 to 13, with a reduction in the standard price of 1*d*. per candle (4*s*. 3*d*. to 4*s*. 1*d*.); in the Uxbridge Gas Act, 1908, similar reductions were made. Truro Gas Act, 1908, also prescribes an illuminating power of 13 candles.

In most of the Acts authorising a reduction of illuminating power the precedent of the South Metropolitan Gas Act, 1900, has been followed by the insertion of a section requiring the company to supply suitable burners, free of charge, to the consumers in lieu of the burners in use.

The testing burner.

The burner to be used for testing the illuminating power of the gas is also prescribed by the Special Act or Order. Usually the prescribed burner has been the Sugg's London Argand (No. 1), or such other burner as may be approved by the Board of Trade for the purpose. Various other testing burners have, however, been prescribed, and in some cases without the power to vary, with the approval of the Board of Trade.

Departmental Committee on Gas Testing in London.

In the metropolis the testing burner, prior to the passing of the London Gas Act, 1905, was Sugg's London Argand (No. 1). In 1904 a Departmental Committee was appointed by the Board of Trade to consider and report upon the question of the testing of gas in London. The committee recommended that Sugg's London Argand (No. 1) burner should continue to be used, and that in testing the gas a flow of 5 cubic feet per hour should be maintained. The recommendations of the committee in this and other respects are set out, *post*, p. 63).

In the Session of 1905 a Bill was jointly promoted by the three London gas companies to carry out certain of the recommendations of the Departmental Committee, and the London County Council also promoted a Bill for the same purpose. The Committee of the House of Commons passed the Bill of the London County Council, incorporating in it some of the provisions of the Companies' Bill, which latter Bill consequently was not allowed to proceed. In the House of Lords Committee an agreement was finally arrived at between the London County Council and the gas companies on the subject of the testing burner, and it was provided (s. 3) that the burner to be used should be prescribed by the gas referees, and that " the burner so prescribed shall be of such a pattern (not being an incandescent or similar burner) as shall be practicable for use by the consumer, and the burner and the chimney (if any) shall be the most suitable for obtaining, and in making the test shall be so used as to obtain, from the gas when consumed at the rate of 5 cubic feet an hour the greatest amount of light " (see London Gas Act, 1905, *post*, p. 295).

Metropolitan Argand (No. 2) burner.

In conformity with this requirement the gas referees prescribed the Metropolitan Argand (No. 2) burner for the testing of the gas supplied by the metropolitan gas companies.

In Session 1906 a new testing clause was framed by the parliamentary authorities (see Model Bill, *post*, p. 367). This clause, which prescribes the use of the Metropolitan Argand (No. 2) burner, has been inserted in all recent Gas Acts and Orders.

Approved by Board of Trade in certain cases.

Applications have from time to time been made to the Board of Trade for the substitution of the new burner for the burner prescribed in the special Act. Approval has been given in the following instances: Aldershot (1906), Hornsey (1907), Southport (1907), Barking (1907), Farnham (1907), Felixstowe (1907), Bromley (1907), Canterbury (1907), Alton (1908), Woking District (1908), St. Albans (1908), Norwich (1909).

The Standard Burner Bills of 1910.

In the Session of 1910, 43 gas companies united in promoting three Bills for the purpose of obtaining the substitution of the new burner for the burners previously prescribed in their respective Special Acts. The Bills met with strong opposition on the part of some of the local authorities concerned, but the Bills were passed by Committees of both Houses without substantial amendment. The second reading of the Bills was opposed in the House of Commons (2nd House), but the Bills were referred to a Committee with an instruction to consider whether any of the cases should be heard separately, and with power in particular to separate the case of Liverpool Gas Company from the other cases, and to include it if necessary in a separate Bill.

The case of Liverpool differed to some extent from that of the other promoting companies, inasmuch as the prescribed burner for testing at Liverpool was a flat flame burner and the prescribed illuminating power was 20 candles.

The Committee did not, however, think fit to divide the Bill and made no special provision with regard to Liverpool.

Notice of opposition on the consideration stage in the House of Commons was given, but was not persisted in, and the Bills were duly passed.

The observations of the Chairman, Sir Henry Kimber, in announcing the decision of the Committee on these Bills were of unusual interest. They are fully reported in the *Journal of Gas Lighting*, July 19th, 1910, p. 213.

Testing for pressure.

The provisions of the Gasworks Clauses Act, 1871 in regard to testing are confined to testing for illuminating power and purity. It is usual for modern Gas Acts, while prescribing the pressure (which is not prescribed by the Act of 1871), to provide that the gas examiner appointed under the Act of 1871, may also test for pressure, as and when he thinks fit, at the testing place or at any public lamp (see clause 26 of Model Gas Bill, *post*, p. 368).

Apparatus for testing.

The Model Gas Bill (clause 25) provides for the use in testing the illuminating power of the gas of the Bar Photometer or the Table Photometer (varying in this respect the requirements of the Act of 1871), and further prescribes the use of Harcourt's Ten-candle Pentane Lamp as the "standard light."

Stand-by Clauses.

The Electric Lighting Act, 1909, contains the following provision (s. 15) for the protection of the undertakers of Electric Lighting Undertakings:—

> "Notwithstanding anything contained in the Electric Lighting Acts or in any Act of Parliament or Provisional Order authorising an undertaking a person shall not be entitled to demand or to continue to receive from undertakers authorised to supply electricity in any area for any premises having a separate supply unless he has agreed with the undertakers to pay to them such minimum annual sum as will give them a reasonable return on the capital expenditure and will cover other standing charges incurred by them in order to meet the possible maximum demand for those premises; the sum to be so paid shall be determined in default of agreement by arbitration."

Similar stand-by clauses have been recently inserted in Acts relating to gas undertakings; *e.g.* the Heywood Corporation Act, 1909, contains the following provisions:—

> Section 37.—Where any person has a supply of gas laid on by the Corporation to any premises for which he has at the same time a supply of gas from an installation other than that of the Corporation, the Corporation shall be entitled to receive from him, as a standing charge in addition to the price of the gas actually supplied to him, a fixed sum to be determined by them, not exceeding £5 per annum: Provided always that, in determining such fixed sum, the Corporation shall have regard to the probable maximum supply of gas which might at any time be required for such premises, and provided also that the Corporation shall not be entitled to any such standing charge as aforesaid in respect of any premises for which the whole supply of gas afforded by them is taken through a meter having a nominal capacity of less than ten lights.
>
> Section 38.—Where any person has a supply of gas laid on by the Corporation to any premises for which he has at the same time a supply of electricity, either from the Corporation or from an installation other than that of the Corporation, the Corporation shall be entitled to charge and receive from him in respect of the supply of gas so laid on such minimum sum as shall be fixed by them not exceeding 25*s.* for any one quarter of a year, notwithstanding that the ordinary charge for the gas actually consumed in such quarter would amount to a lower sum. Provided always that in fixing the amount of such minimum charge the Corporation shall have regard to the probable maximum supply of gas which might at any time be required for such premises: Provided, also, that, in respect of any premises for which the whole supply of gas afforded by the Corporation is taken through a meter having a nominal capacity of less than ten lights, and the supply of electricity is taken from the Corporation, no such minimum charge shall be made; and provided, also, that, in respect of any premises for which the whole supply of gas afforded by the Corporation is taken through such a meter as aforesaid, and the supply of electricity is obtained from an installation other than that

> of the Corporation, the amount of the minimum charge shall not exceed 5*s.* for any one quarter of a year.

In the Mountain Ash Urban District Council Act, 1909 provision was made as follows :—

> "Notwithstanding anything contained in the Gasworks Clauses Act 1871, or any other Act, a person shall not be entitled to demand from the Council a supply, or the continuance of a supply, of gas for premises having a separate supply (that is to say, a supply, from an installation other than that of the Council) unless he shall previously have agreed to pay the Council such minimum annual sum as will give to them a reasonable return on the capital expenditure and standing charges incurred by them to meet the possible maximum demand for those premises, and the minimum annual sum to be so paid shall be determined, in default of agreement, by arbitration in manner provided by the Arbitration Act, 1889."

Provisions which were practically identical with those in the Heywood Corporation Act, 1909, were contained in the Warrington Corporation Bill, 1910. The Home Office made the following report on these clauses :—

> "The Secretary of State observes that these two clauses follow provisions which were allowed last year to Heywood. But these provisions were adapted to somewhat special circumstances; and the Secretary of State suggests, for the consideration of the Committee, that if any provisions to the effect proposed were allowed to Warrington, it would be better, in the absence of any special reason to the contrary, that the two clauses should be combined and re-drafted on the lines of the provision allowed to Mountain Ash last year, and in the Rhondda Urban District Council Bill of the present session. That provision is based on the form which was settled by the Police and Sanitary Committees in regard to the supply of electricity in cases where the consumer has a separate supply, and which is now part of the general law; and its requirements appear to the Secretary of State to be more suitable for adoption generally than the special provisions in the Heywood Act."

The Local Legislation Committee (Chairman, Sir. F. Layland-Barratt), however, agreed to the clauses as proposed in the Bill.

The same Committee, however, allowed a clause in the Rhondda Urban District Council Bill, 1910, in the same terms as the above-quoted section of the Mountain Ash Act, 1909.

Calorific value of gas.

The question of the calorific value of gas has become of growing importance in recent years owing to the introduction of the incandescent mantle for lighting and the great increase in the use of gas for heating and power purposes.

The Departmental Committee of 1904 on gas-testing in the metropolis dealt with this subject in the following paragraphs of their report :—

"The Committee have carefully considered whether the increasing proportion in which gas is being used for heating, as compared with illuminating purposes, renders it desirable that any fundamental alteration of the existing requirements should be made, such as the combination of a standard for calorific power with one for illuminating power, or the abolition of a standard for illuminating power and the substitution of a calorimetric standard.

"Although a large part of the gas used for lighting purposes is used with incandescent mantles, for which the illuminating power of the gas is in itself of no value, a considerable proportion is still consumed in flat-flame burners, and while this is the case the Committee feel it is desirable that testing in respect of illuminating power should be maintained. . . . The Committee do not, however, see their way in existing circumstances to suggest the prescription of tests, which would involve forfeitures . . . . in respect of calorific power, but they recommend that official tests in these respects (supplementary to the existing tests but not for purposes of forfeitures) should be made in such manner and to such extent as the gas referees prescribe. The results of these tests should be recorded and will form a valuable guide for future action."

Calorific tests for London gas.

The London Gas Act, 1905, provided that official tests of the calorific power of the gas supplied by the metropolitan gas companies should be made in accordance with the recommendations of the Departmental Committee.

Standard of calorific power.

By agreement with the London County Council, provision was made in the Gas Light and Coke Company's Act, 1909, for a standard of calorific power for the gas supplied by that company subject to revision by the Board of Trade at triennial periods from 1st January, 1913 (see *post*, p. 350).

In no other case has a calorific standard been prescribed except as regards power gas, as to which see *post*, p. 26.

An attempt to obtain the insertion of a similar provision in the Coatbridge Gas Order, 1909, on opposition by the local authority to the Confirming Bill, was unsuccessful.

The opponents of the Gas Companies (Standard Burner) Bills, 1910 (*supra*, p. 18), sought to obtain the insertion of provisions prescribing a calorific standard for the gas supplied by the companies promoting those Bills, but the committee refused to insert any provision dealing with this matter on the ground that it was outside the scope of the Bill. The Chairman (Sir H. Kimber), however, expressed the opinion that, as a matter of general legislation, a test for calorific power is very expedient.

In the course of his presidential address at the annual meeting of the Institution of Gas Engineers in June, 1910, Mr. James W. Helps, M. Inst. C.E., is reported to have made the following observations upon this subject:—

"In common with most of my professional brethren, I look forward to the time when Parliament will recognise the fact that for all the purposes to which gas is at present applied, its illuminating power is a factor of the most trivial importance, and will, in consequence, eventually decide to abolish the illuminating power standard in favour of one indicative of its heating value. The retention of both the illuminating and the calorific tests would be, in my opinion, not only useless but likely to result in imposing such conditions on the industry as would prove a serious bar to the introduction of improved methods in the carbonisation of coal, and in the after-treatment of the gas. It is, I believe, a recognised fact that the calorific value of gas as produced under the most modern methods does not always vary in direct proportion to its illuminating power, and in many cases which have come under my notice I have found—especially with vertical retorts and with horizontal retorts with what are known as full charges—that it is possible to decrease the illuminating power while actually increasing its calorific value. I have no hesitation, therefore, in expressing the opinion that the dual standard would have the effect of making it more difficult for gas companies to produce that quality of gas best suited for the use of the public and of adding appreciably to the cost at which it could be supplied."

Conversion of stock.

Parliament has now, in many instances, authorised the share capital of companies entitled to pay, *e.g.*, 10 per cent. to be converted into a 5 per cent. stock of double the amount, and in a few instances into stock bearing other rates of dividend with a corresponding increase in the nominal amount of capital. In support of this arrangement, it is contended that it causes no hardship on consumers, while it enables the shareholder to get a better price on the sale of his interest in the company. The first instance is that of the Bristol Gas Company's Act of 1891 (but see also Pudsey Act of 1887), then followed the Oxford Act of 1892, the Crystal Palace District Act of 1893, and the Plymouth and Stonehouse Act of 1894. In 1895 the South Metropolitan Gas Company sought similar powers; but the Bill was rejected by a Commons Committee. In the same session, however, two Acts were passed authorising conversion, viz., Scarborough and Newmarket. The South Metropolitan Company re-introduced their Bill in 1896, when it passed into law and authorised the A., B., and C. 10 per cent. sliding scale stocks of the company, amounting to £2,190,000, to be converted into an equivalent of 4 per cent. sliding scale stock, amounting to £5,475,000. In the same session similiar Acts were passed in relation to the Guildford, Cheltenham, and Ilfracombe Companies respectively. Since then similar Acts have repeatedly been passed. In 1898 the Gas Light and Coke Company obtained power to convert the then existing capital of the company into equivalent amounts of consolidated stocks bearing rates of dividend ranging from 3½ per cent. to 5 per cent. The Parliamentary Return, 1909, No. 180, gives all particulars of conversion up to the end of 1907. More recent instances are Dartford, 1908; Draycott, 1908; Gosport, 1908; Aldershot, 1909; Alliance and Dublin, 1909; Eastbourne, 1909; Heckmondwike and Liversedge, 1909; and Wells, 1909.

Stamp duty on nominal increase of capital.

Sect. 113 of the Stamp Act, 1891 (54 & 55 Vict. c. 39), provides *inter alia* that in case of any increase in the amount of nominal share capital of any corporation or company, a statement of the amount of any such increase must be delivered to the Commissioners, such statement being chargeable with an *ad valorem* stamp duty of 2*s.* (increased to 5*s.* by the Finance Act, 1899 (62 & 63, Vict. c. 9, s. 7)) for every £100 of such increase of capital.

A railway company having obtained power to convert and consolidate their stocks with the result of an increase of the nominal share capital of the company from 74 millions to 134 millions odd, it was held by the House of Lords, affirming decisions of the Courts below, that there had been an increase of capital within the meaning of the above section, and the duty was payable (*Midland Rail. Co.* v. *Att.-Gen.*, [1902] A. C. 171.)

By the Gas Light and Coke Company Act of 1898 (61 & 62, Vict. c. clxxii.) ss. 4—6, certain existing preference and ordinary stocks were consolidated and converted into stocks of increased nominal value. By sub-sect. 2 of sect. 6, power was given to create stock to the value of £437,500 in lieu of stock to the value of £175,000 which the company then had unexhausted power to create. Sub-sect. 2 contained the following proviso: "Except to the extent of the increase in this sub-section provided for, nothing in this Act shall be construed as authorising any increase of nominal share capital of the company." An information was brought against the company by the Attorney-General for penalties for neglecting to deliver to the Commissioners of

Inland Revenue a statement of the increase of the amount of nominal share capital of the company effected under the Act in accordance with s. 113 of the Stamp Act, 1891 (54 & 55 Vict. c. 39). It was contended that the Crown were not bound by the proviso, and that duty was payable. Ridley, J., directed the jury to find a verdict for the Crown (*Att.-Gen.* v. *Gaslight and Coke Co.* (1902), 18 T. L. R. 517). On appeal, the Court of Appeal held that the case could not be distinguished from *Midland Rail. Co.* v. *Att.-Gen.*, *supra* (19 T. L. R. 12). *Cf. Att.-Gen.* v. *Regent's Canal and Dock Co.*, [1904] 1 K. B. 263.

The G. Railway Company was incorporated in 1899 with a capital of £2,400,000, and duly paid the duty thereon under the Stamp Act, 1891. The B. Railway Company was incorporated in 1897 with a capital of £600,000, and duly paid the duty thereon under the Act of 1891. By an Act of 1902, all the powers, rights, privileges, liabilities, and immunities of the G. Railway Company were transferred to the B. Railway Company. It was held that by this transfer there was an increase of the amount of nominal share capital of the B. Company, authorised by the Act of 1902, to the extent of £2,400,000 (*Great Northern, &c., Rail. Co.* v. *Att.-Gen.*, [1909] A. C. 1).

By the Finance Act, 1895 (58 Vict. c. 16) it is provided:

> "12. Where after the passing of this Act, by virtue of any Act, whether passed before or after this Act, either—(*a*), any property is vested by way of sale in any person; or (*b*), any person is authorised to purchase property; such person shall within three months after the passing of the Act, or the date of vesting, whichever is later, or after the completion of the purchase, as the case may be, produce to the Commissioners of Inland Revenue a copy of the Act printed by the Queen's Printer of Acts of Parliament or some instrument relating to the vesting in the first case and an instrument of conveyance of the property in the other case, duly stamped with the *ad valorem* duty payable upon a conveyance on sale of the property; and in default of such production, the duty, with interest thereon at the rate of five per cent. per annum, from the passing of the Act, date of vesting, or completion of the purchase, as the case may be shall be a debt to Her Majesty from such person."

A Private Act provided that a gas company should be dissolved and re-incorporated with further powers; that its property should vest in the new company who should assume all its liabilities; and that the stockholders should receive the same amount of stock in the new company. It was held that the copy of the Act was chargeable with *ad valorem* duty as a "conveyance on sale" on the amount of the liabilities assumed by the new company, and the value of the stock issued by it to stockholders in the old company, such value to be ascertained as on the day of the passing of the Act (*Att.-Gen.* v. *Felixstowe Gaslight Co.*, [1907] 2 K. B. 984; 76 L. J. K. B. 1107; 97 L. T. 340).

As to what is a "conveyance on sale" see also *John Foster, Ltd.* v. *Commissioners of Inland Revenue*, [1894] 1 Q. B. 516; *G. W. Rail. Co.* v. *Commissioners of Inland Revenue*, [1894] 1 Q. B. 507; *John Wilson & Sons, Ltd.* v. *Commissioners of Inland Revenue*, [1895] 23 Ct. of Sess. Cas., 4th Series, 18; *J. & P. Coats, Ltd.* v. *Commissioners of Inland Revenue*, [1897] 2 Q. B. 423; *Great Northern Rail. Co.* v. *Commissioners of Inland Revenue*, [1901] 1 Q. B. 416; *Att.-Gen.* v. *Eastbourne Corporation*, [1904] A. C. 155; *Inland Revenue Commissioners* v. *Irvine and District Water Board*, [1905] 43 Sc. L. R. 649.

Water Gas Committee, 1898.

In 1898 a Departmental Committee (presided over by Lord Belper) was appointed by the Home Secretary to inquire into and report upon:

"(1.) The extent to which water gas and other gases containing a large proportion of Carbonic Oxide are manufactured and used for heating, lighting, and other purposes;

"(2.) The danger attending such manufacture and use;

"(3.) The means by which such dangers may be removed or diminished, either by the discontinuance of the use of such gas or gases or otherwise; and what regulations for the prevention of danger should be established."

The Report of the Committee (Parliamentary Paper, No. 9164, of 1899) deals fully with all these matters. This Report is not unfavourable to the use of the gas; but suggests, *inter alia*, that power should be conferred upon a Central Department to make regulations, and that the provisions for testing for illuminating power and purity contained in the Act of 1871, should be made applicable to the testing of gas for carbonic oxide. No general legislation has followed on this Report, though late in the Session of 1902 a Bill, under the title of the Gas Regulation Bill, was introduced in the House of Lords by the Earl of Dudley (Parliamentary Secretary to the Board of Trade), which provided that the Board of Trade, after consultation with the Local Government Board and the Home Secretary, might make regulations "with respect to the supply of any water gas or any poisonous gas other than ordinary coal gas." The Bill did not proceed to a second reading, and was not re-introduced in any subsequent session.

An unsuccessful attempt was made by the Brighton Corporation to obtain the insertion in the Brighton Gas Act, 1910, of provisions limiting the proportion of carburetted water gas which might be used in the gas supplied by the company.

The Liverpool Corporation sought to insert a provision in the Gas Companies (Standard Burner) Bill (No. 1), 1910, *supra*, p. 18, for the purpose of limiting the amount of carbonic oxide which might be present in the gas supplied by the Liverpool Gas Company, one of the companies promoting the Bill, but the Committee decided that it was outside the scope of the Bill and that they were not competent to deal with the matter.

Quantity of water-gas used.

The Parliamentary Returns (Parliamentary Papers, Nos. 291 and 292, of 1910), show that in the 112,334,153,000 cubic feet of gas sold by statutory gas companies in the year 1909, were included 18,345,916,000 cubic feet of water gas; and in the 65,352,790,000 cubic feet of gas sold by local authorities during the year 1909–1910 were included 5,279,272,000 cubic feet of water gas.

The Returns also show the percentage of carburetted water gas used in admixture with coal gas in particular cases. There is no case in which water gas is supplied without admixture.

Power Gas Acts.

In the Session of 1901 was passed the South Staffordshire Mond Gas (Power and Heating) Company's Act, 1901 (1 Edw. 7, c. ccxli.). This Act authorised the company to manufacture and supply within certain defined parts of South Staffordshire and East Worcestershire "the producer gas commonly known as Mond Gas and any development of Mond Gas approved by the Board of Trade and any other producer gas so approved for the purposes of motive or other power heating or any other purpose to which such gases can be applied except that such gases shall not be supplied or used for the purposes of illumination." The Bill was opposed by a number of local authorities and gas companies authorised to supply ordinary illuminating gas. The Act authorised certain scheduled lands to be acquired under the Lands Clauses Acts, and gave power to lay mains and pipes and to open streets, etc.—these powers, speaking generally, being somewhat similar to those contained in the Electric Lighting (Clauses) Act, 1899. Obligation is placed on the company to supply gas under certain conditions, and by sect. 48 it is provided that the company shall not supply gas for the purpose of illumination, and that no gas supplied by the company shall be used for that purpose, and penalties are imposed for any contravention of the section. Section 52 provides that it shall not be lawful for the company to supply gas which contains more than 14 per centum of carbon monoxide, or which does not possess a distinctive and readily perceptible smell, and provides for penalties for contravention, and further that it shall be the duty of the inspectors of factories and the inspectors of mines to enforce the provisions of the section within their districts, so far as respects factories, workshops, and mines inspected by them respectively. Section 61 provides that "the gas supplied by the company shall have a minimum heating value of 125 British thermal units per cubic foot at 32° Fahr. and 30 inches of mercury pressure, the product of combustion being cooled to 60° Fahr."

By sect. 47 the company may require any consumer of gas supplied by them to consume such gas by a proportional meter (defined to mean "a meter which measures and records a constant fraction of the total quantity passing through the meter") to be supplied and fixed by and at the expense of the company, instead of by a meter which is a legal meter within the meaning of the Sale of Gas Act, 1859. The section then makes certain provisions in lieu of those of the Act of 1859 in regard to meters. By sect. 49 the company are authorised to charge in respect of gas supplied by them such sums as may be agreed between them and the consumer, being at a rate or price not exceeding 3*d.* per 1,000 cubic feet, if the quantity taken be not less than 4,000,000 cubic feet per quarter, and not exceeding 4*d.* per 1,000 cubic feet, if the quantity taken be less. The Board of Trade are authorised to make a slight increase in the price in consequence of any rise in the price of good quality slack.

The North-Western Electricity and Power Gas Act, 1903 (3 Edw. 7, c. ccxxxviii.), authorises the manufacture and supply of electricity and also of power gas. The latter is defined to mean "the producer gas commonly known as Mond Gas and any development of Mond Gas approved by the Board of Trade for the purposes of motive or other power heating or any other purpose to which such gas can be applied except illumination."

The provisions of this Act with respect to power gas follow the lines of the South Staffordshire Mond Gas (Power and Heating) Company's Act, 1901, *supra.* The company obtained a further Act in 1904.

The Belfast and North-East Ireland Electricity and Power Gas Act, 1904 (4 Edw. 7, c. ccxxviii.), the Esk Valley Power Gas Act, 1905 (5 Edw. 7, c. cxxvi.), and the Cumberland Electricity and Power Gas Act, 1906 (6 Edw. 7, c. xcii.) contain similar provisions to those in the earlier Acts, but s. 41 of the Esk Valley Act provides that it shall not be lawful for the company to supply power gas which contains more than 14 per centum of carbon monoxide, "or such higher percentage as may be approved by a Secretary of State," which approval may be given, subject to such conditions as he may think fit, and may be revoked at any time, and in the Cumberland Act, in lieu of prescribing any limitation on the amount of carbon monoxide in the gas, the following provision is inserted (s. 41 (1)):

> "The Secretary of State for the Home Department may at any time either before or after the company shall have commenced to give a supply of power gas to consumers (after holding such inquiries as he may think fit and considering any representations made to him by the company) make or impose in the interests of safety to persons, regulations, terms and conditions with respect to such supply."

Authority to supply power gas in addition to illuminating gas has been given in the following instances:

The Caterham and District Gas Act, 1902, provides that the company may supply "gas for light, heat, power and any purpose to which gas whether manufactured from coal, slack or other substance or liquid may be applicable." Power gas must not contain more than 14 per cent. of carbon monoxide, and no gas must be supplied which does not possess a distinctive and readily perceptible smell."

The Buxton Urban District Water Act, 1902, authorised the council, being the owner of the gasworks supplying the district, to manufacture and supply for purposes other than illumination any gas other than coal gas.

The Matlock and District Gas Act, 1904, authorises the company to supply power gas, but not within the district of the Matlock Bath Urban District Council, except with the consent of the council. The capital to be expended for the purposes of power gas supply is limited to £15,000.

The Selby Urban District Council Gas Act, 1904; Rochester, Chatham and Gillingham Gas Act, 1906; Tottenham and Edmonton Gas Act, 1906; Truro Gas Act, 1906; Bromley Gas Act, 1908; Aldershot Gas, Water and District Lighting Act, 1909; and Harrogate Gas Act, 1909, also contain authority to supply power gas, subject to regulation by the Home Secretary in the interests of safety.

The Greenock Corporation Act, 1909, authorises the manufacture and supply of "non-illuminating" gas, and the use of the existing gasworks, apparatus and plant and appliances for the purpose. The corporation may exercise all the powers they now possess of laying down mains and pipes, and may supply gas fittings, etc., for non-illuminating gas.

The Hamilton Burgh Order Confirmation Act, 1909, provides (s. 16) that "the Corporation may supply gas for heating, cooking, motive power, warming, ventilating and other purposes, and for the particular requirements of any trade, industry, manufacture, or business, and may do all things needful therefor on such terms and conditions in all respects as may be agreed between the Corporation and the person to whom such supply shall be given." The rate charged for gas so supplied shall be the same to all persons under the like circumstances.

Rating of gasworks.

The subject of the rating of gasworks is dealt with at pp. 205 *et seq.*, where will be found a reference to all the decisions connected with the rating of gasworks.

Profits of local authorities' gas or water undertakings.

When gas or water undertakings are in the hands of a municipal or other local authority, their special Acts as a rule authorise them to apply the surplus profits in reduction of rates —in other words to carry such surplus profits to the credit of the borough fund or of the district fund or general district rate. The annual parliamentary returns relating to gas undertakings in the hands of local authorities in the United Kingdom show the amount of surplus profits carried to the relief of rates in each year. See, *e.g.*, 1910, No. 292. There are many variations of the rule. Sometimes it is provided that surplus profits shall not be so applied while the price of gas to consumers exceeds so much per 1,000 cubic feet. This form occurs in Provisional Orders made by the Local Government Board under the Gas and Water Works Facilities Acts, 1870 and 1873, and by the authority of the Public Health Act, 1875, s. 161. See, *e.g.*, the Ynyscynhaiarn Gas Order, 1909, confirmed by 9 Edw. 7, cccxxiv. See also, *e.g.*, Barry and Cadoxton Gas and Water Act, 1893 (56 & 57 Vict. c. lxxvii.). In some instances where outside districts are supplied it is provided that the whole of any surplus profits shall be applied in reduction of the price of gas.

By the Oldham Act of 1886 differential rates were abolished and profits were by sect. 30 defined and strictly limited. See also Nelson Local Board Act, 1888 (51 & 52 Vict. c. cxlvi.). Where surplus profits in such cases go to the district fund of the supplying authority, that course is generally defended on the ground that the district fund, failing any reserve fund, is liable to make good any deficiency in the revenues or receipts of the gas (or water) undertaking. In the case of the Stockport Act of 1899 to authorise the corporation to acquire a water undertaking which supplied not only Stockport, but also a large number of outlying urban districts, the corporation, by their Bill, proposed to carry surplus profits to the district fund, but a Committee of the House of Lords, presided over by Lord Camperdown, decided that the surplus profits should be applied "in reduction of the water rates for domestic supply." The Committee, however, inserted the following proviso: "Provided however that in the event of any local authority other than the urban district council of New Mills purchasing under the section of this Act, the marginal note of which is 'sale of portion of water undertaking to other local authorities,' the portion of the water undertaking of the corporation within the district of such local authority, notwithstanding anything in this section contained, any arbitrator or umpire in determining the price to be paid by such local authority shall value such portion of the water undertaking as aforesaid as if any such balance as aforesaid were directed to be carried by the corporation to the district fund instead of being applied in reduction of such water rates as aforesaid."

The Bury and District Water (Transfer) Act, 1900 (63 & 64 Vict. c. cxliv.), s. 38, follows the Stockport precedent by providing that "the surplus, if any, shall be applied in reduction of the charge for water for domestic purposes when and as circumstances shall permit the same to be done." See also the Liverpool Water Act, 1847 (10 & 11 Vict. c. cclxi.), which authorised the Corporation of Liverpool to purchase the statutory undertakings of two water companies. Sect. 125 provided that the charges for water should be such as not to exceed interest on borrowed money, costs of management and sinking fund; any moneys received in excess being applicable to reduction in the rents and charges for water.

See also Bolton Corporation Act, 1905, s. 60; Tees Valley Water (Consolidation) Act, 1907, s. 90; Birkenhead Corporation Water Act, 1907, s. 75; and Oldham Corporation Act, 1909.

Section 75 of the last-named Act besides providing for the application of the gas revenues for the customary purposes authorises an annual payment of £7,500 to the borough fund, and an annual contribution to a reserve fund of not exceeding 1 per cent. on the aggregate capital expenditure on the undertaking, or if the fund amounts to not less than £50,000 any sum not exceeding £1,000 annually, until the fund is equal to one-tenth of the aggregate capital expenditure. Any balance remaining is to be carried forward and eventually applied to reduction of gas charges equally throughout the limits of supply.

By sect. 25 any surplus water revenue is to be applied to the reduction of water rents for domestic purposes equally throughout the limits of supply.

An important decision in this respect was given by the Committee on the Salford Corporation Bill, 1909 (H. L. Lord Donoughmore, Chairman). This was an omnibus Bill, by which the corporation sought, *inter alia*, power to borrow further money for the purposes of the gas undertaking and to reduce the prescribed illuminating power of the gas. In Session 1895 the corporation sought power to borrow money, and on the opposition of the outside authorities the committee decided that there should be a limitation of the profits, and in consequence the corporation withdrew the Bill, costs being awarded against them. In 1897, however, the corporation obtained an Act giving them additional powers for their gas undertaking and agreed clauses for the protection of the outside authorities were inserted. The Act contained no limitation on the power of the corporation to apply surplus profits in aid of the borough rates.

The Bill of 1909 was opposed by the outside authorities, who asked for a limitation of profits, and for the abolition of differential charges. The Committee decided that in charging their consumers the corporation should be allowed to charge a sum which would only fall under the following heads: A fair price; interest and sinking fund on capital outstanding; a reserve fund of ½ per cent. per annum, the total not to exceed 10 per cent. of the capital outstanding; 1 per cent. on the capital outstanding, which had been described as "brain money *plus* risk." Further, the Committee decided that the same conditions as in the case of companies should be imposed with regard to the amount carried forward, that the differential rates in the outside districts who were opposing should be abolished, and that a statutory obligation should be placed upon the corporation to charge the lighting fund with the cost of public lighting. They also decided that a clause should be inserted stating that if at any time through discontinuance of the use of gas by the public the gas undertaking of the corporation becomes a total loss and the outstanding capital should thus become chargeable on the rates of Salford, that charge should be shared by the ratepayers of the outside districts in proportion to their respective rateable values.

Leave was refused to the promoters to withdraw the gas portion of the Bill, and the Bill as amended was reported to the House, but was subsequently withdrawn by the corporation.

Where one local authority are authorised to supply gas—or it may be water—to other local authorities and places outside, and are also authorised in the section relating to "application of moneys" to carry any surplus to the borough fund or to the district fund, it has been questioned whether the supplying authority are entitled to charge such prices, within their maximum, as will result in substantial profits to be carried to those funds and so applied for the benefit exclusively of the ratepayers of the district supplying. In the case of *Corporation of Birmingham* v. *The West Bromwich Improvement Commissioners*, decided by the Queen's Bench Division, *Times*, 30th May, 1879; *Journal of Gas Lighting*, June 10th, 1879, p. 895, a similar point arose. By the Birmingham Corporation Gas Act, 1875, the Corporation of Birmingham were authorised to acquire the undertakings of two large gas companies supplying Birmingham and various outlying places. By sect. 40, the outlying local authorities were authorised to purchase from Birmingham their portions of the undertakings acquired. By sect. 36 the Corporation of Birmingham were authorised to apply the moneys received by them in the way thereby directed, and from time to time to "carry to the borough improvement rate or fund the net surplus remaining after the fulfilment of the several purposes aforesaid and the annual proceeds of the reserve fund when amounting to £100,000." The question before the Court related to the principle on which the portion purchased by West Bromwich should be valued, Birmingham contending, *inter alia*, that they had acquired a concern out of which they were entitled to make profits and to apply the surplus of such profits in the way above mentioned. The Queen's Bench Division decided against this view. COCKBURN, L.C.J., in the course of his judgment, said: "I cannot think Parliament ever could have contemplated that a public body to whom they were entrusting these great powers, rights and privileges would use them with a view to commercial gain, or use them for any other purpose but that of the benefit of the public. Secondly, I assume, that there should be no such thing as profit, except accidental profit, in the management of such an undertaking. A corporation or a public body distinguished from a private company, have not to make profit; they have to supply both as regards quality and quantity, the article to the consumer upon the cheapest terms upon which they can supply it. If it so happens that accidentally a profit is made, it is pointed out by the Act of Parliament in what way that profit shall be applied, but it cannot have been the intention of Parliament, and it cannot have been in the contemplation of Parliament, and it ought not to be in the contemplation of such a body as the Corporation of Birmingham that they are to treat this as a commercial speculation out of which they are to make a profit for the benefit of the borough. What makes the thing more striking is, that whatever profit they make, is not to be spent on the outlying districts from which the profit is made, but on the borough of Birmingham. I cannot suppose that any such thing was ever in the contemplation of the legislature in passing this Act or in passing this section. Suppose the Corporation of Birmingham have bought this undertaking of the Staffordshire Company upon fair terms as between the corporation and the company, we cannot suppose that the Corporation of Birmingham undertook this with a view to profit."

As regards electric lighting, see Electric Lighting Clauses Act, 1899 (62 & 63 Vict. c. 19), s. 7 (1) (e).

Scotland.

As regards Scotland where the Burghs Gas Supply (Scotland) Act, 1876, has been adopted, very stringent provision is made to ensure that the gas consumer shall not pay more than cost price. See s. 41 of that Act, *post*, p. 968.

Joint Boards

Where a joint board is formed it is frequently the practice to provide in effect that the gas or water shall be supplied at cost price; see *e.g.* Accrington District Gas and Water Act, 1893, Chesterfield Gas and Water Board Act, 1895, and Derwent Valley Water Act, 1899: or as in the Bury and District Water (Transfer) Act, 1900, referred to *ante*, p. 30, that all surplus profits shall be applied in reduction of water charges. In the Swinton and Mexborough Gas Board Act, 1909, it is provided that the surplus may either be employed in reduction of charges, or divided between the constituent authorities. Provision is made for the division of the surplus between the constituent authorities in the Oakengates and Dawley Joint Water Board Act, 1904, and the Stourbridge and District Water Board Act, 1909.

The following List of Joint Boards and Committees, with the Acts under which they were appointed, and the names of the constituent authorities, is taken from the Local Taxation Returns (England and Wales), 1906—07, Parliamentary Paper, 1909, 248—I., pp. 116—120, which also shows the receipts, payments and loan transactions of the various boards and committees :

Joint Boards and Committees.	Acts, &c., under which appointed.	Names of Constituent Authorities.
A.—METROPOLITAN AND EXTRA METROPOLITAN.		
Metropolitan Water Board.	Metropolis Water Act, 1902.	London County Council. 5 other C. C.'s. Corporation of London. 28 Metropolitan Borough Councils. 7 Town Councils. 37 U. D. C.'s. River Thames Conservators. Lee Conservancy Board.
B.—EXTRA METROPOLITAN.		
I.—AREAS WHOLLY URBAN.		
ENGLAND.		
CHESTER AND LANCASTER.		
Ashton-under Lyne, Stalybridge, and Dukinfield Waterworks Joint Committee.	Ashton - under - Lyne, Stalybridge, and Dukinfield (District) Waterworks Act, 1870.	Ashton - under - Lyne Town Council. Dukinfield Town Council. Hurst U. D. C. Mossley Town Council. Stalybridge Town Council.
CUMBERLAND.		
Aspatria, Silloth and District Water Board.	Aspatria, Silloth and District Water Act, 1901.	Aspatria U. D. C. Holme Cultram U. D. C.
DERBY.		
Chesterfield Gas and Water Board.	Chesterfield Gas and Water Board Act, 1895.	Chesterfield Town Council. Newbold and Dunston U. D. C. Whittington U. D. C.
Ilkeston and Heanor Water Board.	Ilkeston and Heanor Water Act, 1901.	Heanor U. D. C. Ilkeston Town Council.
DERBY, AND DERBY, LEICESTER, NOTTINGHAM AND SHEFFIELD C.B.'s.		
Derwent Valley Joint Water Board.	Derwent Valley Water Act, 1899.	Derby County Council. Derby Town Council. Leicester Town Council. Nottingham Town Council. Sheffield Town Council.

Joint Boards and Committees.	Acts, &c., under which appointed.	Names of Constituent Authorities.
B.—EXTRA METROPOLITAN. I.—AREAS WHOLLY URBAN. ENGLAND—*continued.* DURHAM, YORK, NORTH RIDING, AND MIDDLESBROUGH C.B.		
Tees Valley Water Board...	Stockton and Middlesbrough Corporations Water Act, 1876.	Middlesbrough Town Council. Stockton-on-Tees Town Council. Thornaby-on-Tees Town Council.
LANCASTER.		
Accrington Gas and Water Board.	Accrington District Gas and Water Board Act, 1894.	Accrington Town Council. Church U. D. C. Clayton-le-Moors U.D.C. Great Harwood U. D. C. Rishton U. D. C.
Heywood and Middleton Water Board.	Heywood and Middleton Water Board Acts, 1898 and 1901.	Heywood Town Council Middleton Town Council.
LANCASTER AND BLACKPOOL C.B.		
Fylde Water Board ...	Fylde Waterworks (Transfer) Act, 1897.	Blackpool Town Council. Fleetwood U. D. C. Lytham U. D. C. St. Anne's-on-the-Sea U. D. C.
NORTHAMPTON.		
Higham Ferrers and Rushden Water Board.	Higham Ferrers and Rushden Water Board Act, 1902.	Higham Ferrers Town Council. Rushden U. D. C.
SALOP.		
Oakengates and Dawley Joint Water Board.	Oakengates and Dawley Water Board Act, 1904.	Dawley U. D. C. Oakengates U. D. C.
YORK, WEST RIDING.		
Dewsbury and Heckmondwike Waterworks Board.	Dewsbury and Heckmondwike Waterworks Act, 1876.	Dewsbury Town Council. Heckmondwike U. D. C.
Hebden Bridge and Mytholmroyd Gas Board.	Hebden Bridge and Mytholmroyd Gas Board Act, 1895.	Hebden Bridge U. D. C. Mytholmroyd U. D. C.
II.—AREAS WHOLLY RURAL. ENGLAND. GLOUCESTER AND WORCESTER.		
Evesham and Pebworth Joint Water Committee.	Local Government Act, 1894.	Evesham R. D. C. Pebworth R. D. C.
SOMERSET.		
Bath and Clutton Joint Water Committee.	Local Government Act, 1894.	Bath R. D. C. Clutton R. D. C.

Joint Boards and Committees.	Acts, &c., under which appointed.	Names of Constituent Authorities.
B.—EXTRA METROPOLITAN.		
II.—AREAS WHOLLY RURAL.		
WALES.		
BRECKNOCK AND GLAMORGAN.		
Pontardawe and Ystradgynlais Joint Water-Committee.	Local Government Act, 1894.	Pontardawe R. D. C. Ystradgynlais R. D. C.
DENBIGH AND MONTGOMERY.		
Llanrhaiadar Joint Water Committee.	Local Government Act, 1894.	Llanfyllin R. D. C. Llansilin R. D. C.
III.—AREAS PARTLY URBAN AND PARTLY RURAL.		
ENGLAND.		
BEDFORD.		
Biggleswade Water Board.	Biggleswade Water Act, 1901.	Biggleswade U. D. C. Biggleswade R. D. C.
CORNWALL.		
Long Rock Joint Water Committee.	Local Government Act, 1894.	Ludgvan U. D. C. West Penwith R. D. C.
LANCASTER AND BURY C.B.		
Bury and District Joint Water Board.	Bury and District Joint Water Board Acts, 1900 and 1903.	Bury Town Council. Bury R. D. C. Haslingden Town Council. Little Lever U. D. C. Radcliffe U. D. C. Ramsbottom U. D. C. Rawtenstall Town Council. Tottington U. D. C. Whitefield U. D. C.
LANCASTER AND SOUTHPORT C.B.		
Southport, Birkdale and West Lancashire Water Board.	Southport Water (Transfer) Act, 1901.	Birkdale U. D. C. Southport Town Council. West Lancashire R. D. C.
STAFFORD AND WARWICK.		
Tamworth Joint Water Committee.	Local Government Act, 1894.	Tamworth Town Council. Tamworth R. D. C.
WILTS.		
Westbury and Whorwellsdown Joint Water Committee	Local Government Act, 1894.	Westbury U. D. C. Westbury and Whorwellsdown R. D, C.

Joint Boards and Committees.	Acts, &c., under which appointed.	Names of Constituent Authorities.
B.—EXTRA METROPOLITAN.		
III.—AREAS PARTLY URBAN AND PARTLY RURAL.		
WALES.		
CARNARVON AND DENBIGH.		
Conway and Colwyn Bay Joint Water Supply Board.	Provisional Order under the Public Health Act, 1875.	Colwyn Bay and Colwyn U. D. C. Conway Town Council. Conway R. D. C. Glan Conway R. D. C.
Llanrwst and Trefriw Joint Water Committee.	Local Government Act, 1894.	Geirionydd R. D. C. Llanrwst U. D. C.

For other instances of Acts authorising the formation of Joint Boards, see Wath and Bolton Gas Boar Act, 1908 (8 Edw. 7, c. xciii.); Stourbridge and District Water Board Act, 1909 (9 Edw. 7, c. xci.), and Swinton and Mexborough Gas Board Act, 1909 (9 Edw. 7, c. lxvi.).

Accounts of joint boards.

By a general order of the Local Government Board, dated July 31st, 1895, rules are laid down as to the accounts of joint water boards and committees, and many forms of accounts are prescribed. See Statutory Rules and Orders (revised to December 31st, 1903), Vol. IV., pp. 200—210.

Purchase by outside authority of their portion of undertaking.

In every case in which a local authority is authorised by Parliament to acquire a gas or water undertaking which also supplies outside districts, it is the practice of Parliament to insert a clause authorising any local authority outside the area of the purchasing authority to purchase their portion of what is bought. The question has frequently arisen whether what the outside authority is authorised to purchase is their "portion of the undertaking" or their "portion of the waterworks [gasworks] and plant." See the Model Clause, p. 370. A remarkable litigation arose in a case in which the phraseology employed was somewhat different. Stockton and Middlesbrough were authorised by Parliament to purchase the undertaking of the Stockton and Middlesbrough Water Company. The outside districts respectively were authorised to purchase from the Stockton and Middlesbrough Board "the mains, pipes, and fittings belonging to the board within their district." The question arose whether in view of these words an outlying purchasing authority was bound to pay anything for goodwill. The arbitrator stated his award in the form of a special case. In it he stated that in fixing the price of the mains, pipes, and fittings at the sum of £25,424, he took into consideration the loss of revenue earned by the board by the supply of water through such mains, pipes, and fittings; but if the Court should be of opinion that the basis of calculation was wrong, and that the true basis was (as had been contended on behalf of the purchasers) the value of the mains, pipes, and fittings regarded as plant *in situ* capable of earning a profit, he fixed the price at £8,006. The case ultimately went to the House of Lords, who decided (affirming the decision of the Court of Appeal) that in fixing the price the basis of calculation should be merely the value of the mains, pipes, and fittings regarded as plant *in situ* capable of earning a profit, and that the arbitrator ought not to include in the price any compensation to the board for the loss of the right to supply water within the outlying district (*Stockton and Middlesbrough Water Board* v. *Kirkleatham L. B.*, [1893] A. C. 444).

A limited company supplied gas under Provisional Order in several parishes, including the urban district and parish of Hucknall-under-Huthwaite. By an agreement made between the company and the district council, the latter agreed to purchase "all and singular the works, pipes, mains, meters, and other gas apparatus, and all other the real and personal property (if any), and all effects of the company of whatsoever kind which are laid down or situate within the urban district and parish of Hucknall-under-Huthwaite, freed and discharged (as between the council and the company) from all debts and outgoings and liabilities. . . ." The question of price was referred to an arbitrator. As to the principle of valuation the company contended that the sale was of part of the gas company's undertaking as a going concern, while the district council contended that the sale was merely of certain plant and materials *in situ*. On a case stated, the Court of Appeal (reversing BRAY, J.) decided that the purchase money was to be assessed on the basis of a sale of a portion of the gas undertaking as a going concern (*Hucknall-under-Huthwaite U. D. C.* v. *South Normanton Gas Co., Ltd.* (1905), 69 J. P. 329).

Where under the Tramways Act, 1870, s. 43, a local authority require a statutory tramway company to sell so much of the tramway works and undertaking as is within the district, the payment must include the value of buildings of the promoters which, though situated outside the district, are suitable to and used by the promoters for the purposes of their undertaking within the district (*Manchester Carriage and Tramway Co., Ltd.* v. *Swinton and Pendlebury U. D. C.*, [1906] A. C. 277). *Cf.*

Edinburgh Street Tramways Co. v. *Edinburgh Corporation*, [1894] A. C. 456; *London Street Tramways Co.* v. *London C. C.*, [1894] A. C. 489; *London Tramways Co.* v. *London C. C.*, [1898] A. C. 375; *Manchester Tramway Co.* v. *Manchester Corporation* (1902), 18 T. L. R. 779; *Kingston (Ontario) Light, &c., Co.* v. *Kingston (Ontario) Corporation* (1904), 20 T. L. R. 448; *London, Deptford and Greenwich Tramways Co.* v. *London C. C.*, [1905] 1 K. B. 316; and *Wolstanton United U. D. C.* v. *Burslem Corporation* (1907), 72 J. P. 28.

In 1899 the Corporation of Stockport, having agreed upon a price with the water company, sought power from Parliament to purchase the undertaking of the water company supplying their district and various outlying districts. A purchase clause was inserted by the promoters in their Bill authorising the outlying authorities to purchase their "portion of the undertaking." There was much contest over those words in both Houses, it being alleged that the price agreed to be paid was excessive. In the result the Bill passed with those words. See Stockport Corporation Act, 1899, s. 59. A similar question arose in the Session of 1900, when the Morecambe U. D. C., having agreed upon a price with the Morecambe Gas Company, introduced a Bill to authorise the purchase. A similar clause was inserted authorising purchase by outside authorities of their "portion of the undertaking." Heysham, an outlying local authority, opposed, alleging that the agreed purchase price was excessive. The words were retained. See Morecambe U. D. C. Act, 1900, s. 18. See also Loughborough Corporation Act, 1899, s. 40; Shipley Improvement Act, 1901, s. 31; Poulton-le-Fylde Gas Act, 1901, s. 41; Rickmansworth Gas Act, 1903, s. 43; Doncaster Corporation Act, 1904, s. 11 (portion of the waterworks and plant); Kirkby-in-Ashfield U. D. C. (Gas) Act, 1904, s. 33; Minehead U. D. C. Act, 1904, s. 37; Leeds Corporation (Consolidation) Act, 1905, s. 43; Mansfield Corporation Act, 1905, s. 12 (portion of the waterworks and plant); Tees Valley Water (Consolidation) Act, 1907, s. 50; Leicester Corporation Act, 1908, s. 6; Wath and Bolton Gas Board Act, 1908, s. 57 (portion of gas undertaking including goodwill); Conway Gas Act, 1909, s. 24 (portion of gasworks and plant); Llanelly Waterworks Act, 1909, s. 29 (portion of waterworks and plant); Risca U. D. C. Act, 1909, s. 44 (portion of water undertaking including goodwill).

An important question arose in the course of the arbitration proceedings under the Metropolis Water Act, 1902, as to whether in ascertaining the price to be paid to the metropolitan water companies the undertakings to be transferred to the Water

Board were to be regarded as being subject to the liability to make payments to the sinking fund provided for by the Acts of the water companies. Stated shortly, the effect of the enactments as to the sinking fund was that on the issue of debenture stock by a company there should be carried to a sinking fund in each year such percentage on the amount of the stock as should be equal to the excess of the average percentage of the dividend or interest paid for that year on all the capital of the company, whether share capital or borrowed, above the interest, together with an additional 1 per cent. added thereto for management, on such stock, such sinking fund to be held and applied by the Chamberlain of the City of London as trustee for the purpose of purchasing and extinguishing the share capital of the company, or for such other purposes as Parliament might from time to time determine. The Court of Appeal, on a special case stated by the Court of Arbitration, held that the undertakings were transferred subject to that liability to make the payments to the sinking fund (*East London Waterworks Co.* v. *Metropolitan Water Board* (1904), 20 T. L. R. 245). An appeal to the House of Lords was dismissed with costs (see the First Annual Report of the Metropolitan Water Board at page 12). A similar conclusion was arrived at on appeal to the House of Lords in *In re New River Co. and Metropolitan Water Board* (1904), 20 T. L. R. 687.

Compulsory purchase of gas and water undertakings by local authorities.
Non-statutory gas companies.

When a non-statutory company comes to Parliament seeking re-incorporation and statutory powers, and the local authority oppose and seek power to purchase the undertaking, and give a pledge to come to Parliament with a Bill for this purpose in the next session of Parliament, it is the general practice of committees, if they pass the company's Bill, to " impose the condition of a purchase clause," to the effect that if the local authority should promote a purchase Bill in the next session of Parliament, the company shall not oppose it in principle. It is also the practice in such cases to provide that in the event of such a purchase being effected, the powers of the Act shall not be considered as enhancing the price. One strong reason in support of the policy indicated is, that while the non-statutory company is unauthorised by statute, the local authority is so authorised by the Public Health Act, 1875, s. 51, as regards water, and s. 161 as regards gas; and therefore that the passing of the company's Bill would oust the local authority from their statutory powers under the Act of 1875. In the case of the Hitchin Gas Act, 1905, a purchase clause asked for by the urban district council was refused by a House of Commons Committee, but was inserted by the Committee of the House of Lords.

The cases illustrating this rule with regard to non-statutory gas companies will be found in Schedule A., *post*, p. 109.

Non-statutory companies applying for Provisional Order.

When a non-statutory company instead of coming to Parliament for an Act, promotes a Provisional Order for statutory powers under the Gas and Water Works Facilities Acts, 1870 and 1873, and the local authority oppose at the Board of Trade inquiry and ask for insertion of a purchase clause, the Board have not, up to the present time, imposed that condition unless by consent. On opposing the confirming Bill in Parliament, the local authority may obtain the insertion of such a clause. The following are illustrations: In 1899, the non-statutory gas companies supplying respectively Newtown, Brigg, and Farnham, promoted Provisional Orders. The local authorities opposed in each case, and asked for purchase clauses, but the Board of Trade refused to insert them. In the cases of Newtown and Farnham the Committee on the confirming Bill (Lord Camperdown, chairman), inserted purchase clauses. In the case of Brigg, the local authority had themselves a purchase Bill in Parliament, which ultimately passed unopposed, terms of purchase having been arranged during the progress of the Bill before Committee. Agreed clauses for purchase by the local authority were inserted in the Hailsham Gas Order and the Wexford Gas Order, both of 1903; the Elham Valley Gas Order, 1904, the Sandiacre Gas Order, 1905, the Tavistock Gas Order, 1905, the Rainford Gas Order, 1908, and the Hayfield Gas Order, 1909; the Board of Trade still holding to their practice not to insert a purchase clause unless by agreement.

Statutory gas companies.

Where a statutory gas company applies for further powers, and the company have fairly carried out their statutory duties, it is not the practice of Committees to insert a compulsory purchase clause in favour of a local authority. This practice has been fairly uniform, but not absolutely so. The cases are collected in Schedule B., *post*, p. 117. In the Waterford Case in 1877, the opposition of the company to the purchase clause does not appear to have been strenuous. In the Ilkley Case, the Committee of the House of Commons passed the Bill, but an arrangement was come to in the other House. In the St. Anne's-on-Sea Gas Bill, 1897, a Committee of the House of Lords inserted a purchase clause, but the Bill was rejected in the House of Commons. The cases of Morley, 1898, Loughborough, 1899, and Pontefract, 1906, afford examples of the insertion of purchase clauses. In these cases there was no contest in the second House. In the Redhill and Reigate case in 1898, the Redhill Gas Company (statutory) promoted a Bill to acquire by agreement the undertaking of the Reigate Gas Company, Limited. The Reigate Corporation opposed, and sought a purchase clause. The Redhill Company's works were not within the district of the corporation. A Committee of the House of Lords gave a purchase clause. In consequence, the promoters withdrew the Bill. In 1906, the Pontefract Corporation promoted a Bill for the compulsory acquisition of the undertaking of the Pontefract Gas Company. No mismanagement on the part of the company was shown, but the power of compulsory purchase was granted apparently on the ground that the company had shown a want of enterprise. On the other hand, the following are instances where, in the case of statutory gas companies, the local authorities have failed to obtain powers of compulsory purchase: Pudsey, 1887, Derby 1890, Southend, 1892, North Middlesex, 1895, Norwich, 1896, Weymouth, 1897, Ilford, 1899, Lea Bridge, 1899, Heckmondwike Gas, 1901, the Hartlepool Gas and Water cases of 1898, 1900, and 1901, and Bognor, 1904. The last named case was that of a Limited Company authorised by Provisional Order. A further Provisional Order was obtained in Session 1904, authorising additional works, extension of limits of supply and additional capital. The local authority opposed the Order and asked for the insertion of a purchase clause. In conformity with their usual practice the Board of Trade refused to insert the clause, and the local authority opposed the Confirmation Bill in Parliament. A Committee of the House of Lords refused the clause.

Suspensory clauses.

In the East Hull Gas Act, 1906, a purchase clause asked for by the Corporation of Hull was refused, but a clause (s. 24) was inserted by the Committee (chairman, Mr. H. J. Tennant), providing that the Act should not prejudge or prejudice the question of purchase if the Corporation should promote a Bill therefor in the next session of Parliament, and that in the meantime the company should not raise further capital, nor borrow money except for specified purposes and to a limited extent. A similar provision was also inserted by the Committee in the Merthyr Tydfil Gas Act, 1906. Sect. 60 of the last named Act is as follows:

> "If the Corporation shall introduce a Bill into Parliament in the next Session for an Act to empower them to purchase the undertaking of the Company, nothing in this Act contained shall be deemed to prejudge or prejudice one way or the other the question of such purchase and in the event of such Bill becoming law the value of the undertaking shall not be enhanced or depreciated by the passing of this Act or by anything herein contained, and in addition to such value the Company shall be repaid all moneys in excess of twelve hundred pounds (if any), which the arbitrator, arbitrators or umpire, who determines or determine such value may deem to have been

> reasonably expended by the Company in obtaining this Act and for capital purposes and in acquiring the said lands and easements and erecting a gasholder and other necessary works in connection therewith. But the Company shall not issue any capital before the first day of December, 1906, and if the Corporation shall give notice of and introduce and *bonâ fide* promote such Bill then during the promotion of such Bill, and they shall not borrow any moneys save for the purposes aforesaid before the like date, but the Company may borrow for these purposes notwithstanding any other provision in this Act contained."

The Heckmondwike and Liversedge Gas Act, 1909, contains a similar clause.

Non-statutory and statutory water companies.

The practice of Parliament with regard to the compulsory acquisition by local authorities of the undertakings of water companies has not been uniform. Where the undertaking is non-statutory, there are several precedents in favour of purchase. See Schedule C., *post*, p. 129. Where the undertaking is statutory there are precedents both ways. See Schedule D., *post*, p. 132. The most notable in favour of compulsory acquisition being Stockton and Middlesbrough, 1876; Sheffield, 1887; Fylde, 1897; Harrogate, 1897; Filey, 1898; Horsforth, 1899; Southport, 1901; Devonport, 1902; Clevedon, 1909; Worksop, 1909.

Price of gas undertakings on compulsory acquisition by local authorities.

As regards the estimation of the price which a local authority ought fairly to be asked to pay for the purchase of a gas undertaking as a going concern, it was stated in the first edition of this book published in 1872, that "the principle governing the price is usually a calculation at the rate of twenty years' purchase of the net profits of a company having Parliamentary authority to open streets and supply gas, and sixteen and two-thirds years' purchase where without such sanction." In the later edition of 1884, twenty-five years' purchase was suggested with certain qualifications as a fair estimation of value of a company possessing Parliamentary powers. But all of these figures have long since had to be revised with reference to what is now the market value of money; and larger multipliers than those above named have undoubtedly been applied of late years. The main considerations in fixing a fair multiplier, in each particular case, would seem to be not merely the amount of net profits earned, but also the capacity of the company to continue to earn such profits; and this must depend upon a great variety of considerations, including the condition of the works, their capability of extension, and the chances of effective competition.

Prepayment meters.

Prepayment meters are now largely used. Where the gas supply is in the hands of the local authority the Local Government

Board will sanction a loan for the purpose of obtaining meters, prepayment meters and stoves. All of these are exempt from distress or execution against the person to whom they are let for hire. See *post*, p. 231. The Metropolis Gas (Prepayment Meter) Act, 1900, provides that in addition to the authorised price of the gas, a further charge may be made at the rate of 10*d*. per 1,000 cubic feet to "include the providing, letting, fixing, repairing and maintenance of the meter and fittings and the cost of collection, inspection and any other cost incurred by the company in connection with the meter and fittings." This rate is subject to revision by the Board of Trade. See *post*, p. 294.

A similar power of charge is now commonly inserted in all Gas Acts with an additional provision allowing a charge of 1*s*. per 1,000 cubic feet if the fittings include a cooking stove. See Model Bill Clause, *post*, p. 367.

Electrolytic action on gas and water pipes.

The question of electrolytic action on gas and water pipes was considered by a Joint Committee of both Houses of Parliament in 1893, and the result of the deliberations of the Committee was the inclusion in the Model Tramways Bill of the following clause relating to this matter:

> "The following provisions shall apply to the use of electrical power under this Act unless such power is entirely contained in and carried along with the carriages:—
>
> (1) The company shall employ either insulated returns or uninsulated metallic returns of low resistance:
>
> (2) The Company shall take all reasonable precautions in constructing placing and maintaining their electric lines and circuits and other works of all descriptions, and also in working their undertaking, so as not injuriously to affect by fusion or electrolytic action any gas or water pipes or other metallic pipes structures or substances or to interfere with the working of any wire line or apparatus from time to time used for the purpose of transmitting electrical power or of telegraphic telephonic or electric signalling communication or the currents in such wire line or apparatus:
>
> (3) The electrical power shall be used only in accordance with the Board of Trade regulations and in such regulations provision shall be made for preventing fusion or injurious electrolytic action of or on gas or water pipes or other metallic pipes structures or substances, and for minimising as far as is reasonably practicable injurious interference with the electric wires lines and apparatus of other parties and the currents therein, whether such lines do or do not use the earth as a return:
>
> (4) The company shall be deemed to take all reasonable precautions against interference with the working of any wire line or apparatus, if and so long as they adopt and employ at the option of the company either such insulated returns or such uninsulated metallic returns of low resistance and such other

> means of preventing injurious interference with the electric wires lines and apparatus of other parties and the currents therein as may be prescribed by the Board of Trade regulations, and in prescribing such means the Board shall have regard to the expense involved and to the effect thereof upon the commercial prospects of the undertaking.
>
> (5) At the expiration of two years from the passing of this Act the provisions of this section shall not operate to give any right of action in respect of injurious interference with any electric wire line or apparatus or the currents therein, unless in the construction erection maintaining and working of such wire line and apparatus all reasonable precautions including the use of an insulated return have been taken to prevent injurious interference therewith and with the currents therein by or from other electric currents:
>
> (6) If any difference arises between the company and any other party with respect to anything hereinbefore in this section contained, such difference shall unless the parties otherwise agree be determined by [arbitration] the Board of Trade or at the option of the Board by an arbitrator to be appointed by the Board, and the costs of such determination shall be in the discretion of the Board or of the arbitrator as the case may be.

It has been the practice of Parliament to refuse provisions in protective clauses rendering the company liable in any event for injurious interference with pipes or wires of other parties, whether such clause has been agreed with the promoters or otherwise.

In Session 1903, however, the Brighton and Hove Gas Company secured the insertion by a Committee of the House of Lords (Lord Hatherton, Chairman) of the following clause in the Brighton Corporation Tramways Act:

> "If at any time it be proved that any injury or damage to any mains, pipes or apparatus of the Brighton and Hove General Gas Company, shall have resulted from the use of electric current on any of the tramways authorised by this Act, nothing in this Act shall relieve the Corporation from liability to make compensation for such injury or damage."

In the same session the Crystal Palace District Gas Company obtained a similar clause in the Beckenham Urban District Bill, except that the liability was confined to damage from "electrolysis resulting from the use of electric current" (Duke of Bedford, Chairman). On the motion for the third reading of the Bill, Earl Stanhope moved an amendment to omit the clause. The motion was supported by the Earl of Morley (the Lord Chairman) who stated that the practice had been to refuse requests for individual protection on the ground that the Board of Trade regulations, if properly carried into effect were sufficient, and that if not the proper course was to make them more stringent. The motion was also supported by the representative of the Board of Trade, and the clause was negatived.

The Torquay Tramways Bill, 1904, as introduced, contained a clause for the protection of the Corporation water mains and the gas mains of the St. Mary Church gas undertaking belonging to the Corporation of Torquay. The Torquay Gas Company opposed the Bill, and the House of Commons Committee inserted a clause for the protection of their mains. Both clauses were struck out by counsel to the Lord Chairman when the Bill reached the House of Lords, but were re-instated by the Select Committee (Lord Hawkesbury, Chairman) on the opposition of the corporation and the gas company. The clauses were, however, again disallowed by the Lord Chairman as being opposed to the practice of Parliament. On the third reading of the Bill, Lord Clifford of Chudleigh proposed the re-insertion of these provisions, but the motion was resisted by the Lord Chairman and Lord Wolverton (on behalf of the Board of Trade), and was negatived.

In Session 1908, the Brentford Gas Company sought to obtain the insertion of a clause in the London and District Electricity Bill, 1908, arranging for compensation in the event of injury being done to their gas distribution system by the operations of the electricity company, and compelling the electricity distribution system to be so constituted as to ensure that no accumulation of gas can occur. The Committee of the House of Lords (Earl of Cromer, Chairman) refused the clause.

Certain clauses now generally inserted in Gas Acts.

The Gasworks Clauses Acts, 1847 and 1871, no longer contain all the "provisions usually contained in Acts of Parliament authorising the construction of gasworks" (preamble of Act of 1847). Clauses on the following subjects are now usually inserted in Gas Acts:

(1) *Dividends on different classes of stock or shares to be paid proportionately.*—The object is to provide that in case in any half-year the funds of the company applicable to dividend shall be insufficient to pay the full amount of dividend at the prescribed maximum rate on each class of ordinary stock or shares in the capital of the company, a proportionate reduction shall be made in the dividend of each class (Model Bill, *post*, p. 364). See *Maughan* v. *Leamington Priors Gas Co.*, cited p. 1129.

(2) *Pressure of gas.*—This is now always provided for, and the gas examiner appointed under the Act of 1871 is authorised to test for pressure. See p. 241 n., and Model Bill, p. 368.

(3) *Power to purchase lands by agreement.*—The effect of this clause is to enable the company, in addition to their scheduled lands, to purchase "by agreement, but not otherwise," a limited number of acres for the purposes of their works and undertaking, but no nuisance may be created or permitted on any such lands,

nor may they be used for the purpose of manufacturing gas or residual products. See Model Bill, *post*, p. 366.

(4) *Construction and placing of pipes, etc., between mains and meters.*—The object of this clause is to authorise the company to specify the size and material of the pipes and fittings thereof which are to be laid between the company's mains and the meter, and (so far as the same are intended to be covered over) on the consumer's premises; and also to give the company certain powers of inspection with regard to pipes and meters. The company are also authorised to refuse to supply gas to the premises until the provisions of the section have been complied with, an appeal to a petty sessional court being given. See Model Bill, *post*, p. 368.

(5) *Payment of interest on money deposited as security.*—By s. 11 of the Act of 1871 security may be demanded in respect of the supply of gas to any consumer, and by sect. 14 of the same Act security for any meter supplied by the gas company may be demanded. A clause is now generally inserted requiring the gas company to pay interest at the rate of 4 per cent. per annum on every sum of 10*s*. deposited by way of such security for every six months during which the same remains in their hands (Model Bill, p. 369).

(6) *Power to supply fittings, etc. Fittings not to be subject to distress, etc.*—Companies and local authorities supplying gas are now granted large powers to let for hire (but not to manufacture) engines, stoves, ranges, pipes, and other fittings for lighting, motive power, warming, ventilation, etc. Special provision is now always added to the effect that these shall not be subject to distress or to the landlord's remedy for rent, or be liable to be taken in execution under process of any court or any proceedings in bankruptcy against the person in whose possession the same may be; provided a sufficient mark or brand be affixed or impressed indicating the ownership. Local authorities obtaining these powers are prohibited from expending money, except through a contractor, upon the provision of such fittings or the labour and materials required for their fixing, repairing, or removal, and are required to adjust their charges therefor so as to meet the expenditure incurred, including interest on borrowed moneys and sinking fund. They are also required to state separately on every demand note every sum charged for the provision and fixing of the fittings, and to show the receipts and expenditure separately in the published annual accounts of the gas undertaking (Model Bill, p. 369). See *Gaslight and Coke Co.* v. *Hardy*, p. 188.

(7) *Consumers to give notice before removing.*—This clause requires twenty-four hours' notice in writing by a consumer before quitting any premises supplied with gas by meter. In default of notice the consumer remains liable for the supply up to the next usual period for ascertaining the register of the meter or the date from which any subsequent occupier shall require the company to supply gas (Model Bill, p. 369).

(8) *Power to refuse to supply to persons in debt for other premises.*—See *Montreal Gas Co.* v. *Cadieux*, p. 225, and Model Bill, p. 370.

(9) *Notice by consumer to company to discontinue supply.*—It is usual to enact that such a notice shall not be of any effect unless it be in writing (Model Bill, p. 370).

(10) *Period of error in defective meters.*—It is usual to enact that the erroneous registration shall be deemed to have first arisen during the then last preceding quarter, unless it be proved to have first arisen during the then current quarter. The amount of the allowance to be made to or of the surcharge to be made upon the consumer by the company being payable by or to the company to or by the consumer, as the case may be, and being recoverable in like manner as gas rents are recoverable by the company (Model Bill, p. 370).

(11) *Company may contract with local authority, etc., for supply in bulk.*—Companies are now specially authorised to contract with any local authority, company, or person authorised to supply gas under parliamentary powers in any district adjacent to the company's limits of supply for the supply to them respectively of gas in bulk upon such terms and conditions, and for such periods not exceeding in any case seven years from the making of the contract as shall be agreed upon, but the company are not thereby authorised to lay any mains or interfere with any street beyond their limits of supply (Model Bill, p. 370).

(12) *Saving as to penalties.*—This clause provides that no penalty shall be incurred for insufficiency of pressure, defect of illuminating power, or excess of impurity in the gas in any case in respect of which it is proved that such insufficiency, defect, or excess was produced by any circumstance beyond the control of the company, but the want of sufficient funds is not to be held to be a circumstance beyond the control of the company (Model Bill, p. 368).

(13) *Discounts.*—Many Gas Acts contain provisions with regard to the discounts which may be allowed to consumers in consideration of prompt payment, and large consumption. The

amount of the discount allowable varies in different Acts, but generally it is limited to 10 per cent. for prompt payment, with "in addition thereto or irrespective thereof" discounts not exceeding 15 per cent. to large consumers. The discounts or rebates must be of equal amount under like circumstances to all consumers, and notice of the effect of the enactment must be endorsed on every demand note for gas rates or charges.

These provisions would appear to operate by way of limitation to the general power given by s. 13 of the Gasworks Clauses Act, 1847, to enter into contracts for the supply of gas "in such manner and upon such terms as shall be agreed upon," and the most recent practice is to insert in lieu of a "discounts" clause a provision that s. 13 of the Act of 1847 shall be read as if the words "Provided also that every such contract entered into by the company shall be alike in terms and amount under like circumstances to all consumers" were added at the end of that section.

Alternative provisions relating to this matter are contained in the Model Bill. See *post*, pp. 362, 367, clauses 1 and 21.

In addition to the clauses above referred to (all of which have found their way into the Model Gas Bill), some other clauses which are more or less frequently inserted in Gas Acts may here be noticed.

Power to lay pipes in streets not dedicated to the public use on application of an owner or occupier of premises abutting, or in course of building.—A clause giving this power is frequently inserted in Gas Acts. For the common form of the clause see s. 12 of the Bury Corporation Act, 1909. The Eastbourne Gas Act, 1909, provides (s. 42) that before the company break up such streets or roads they shall give three clear days' notice to the corporation (except in cases of emergency), and that in carrying out the works and reinstating the street or road, the company shall conform to all such requirements made by the corporation as shall not be inconsistent with any requirements of the owner of the street or road. Differences are to be determined by a court of summary jurisdiction. The work is to be carried out under the superintendence of the corporation, and provision is made for the proper lighting and guarding of the portion of the road broken up. See also Littlehampton Gas Act, 1909, s. 57.

A modified form of the clause is inserted in Gas Provisional Orders, under which the power to break up private streets and roads is only exercisable with the consent of the owner of the street or road. The reason for this limitation appears to be the absence of any authority in the Gas and Water Works Facilities Act, 1870, to grant in a Provisional Order under that Act compulsory powers over private property.

Power to hold licences under letters patent.—This clause is to be found in many recent Gas Acts. For an instance of the common form of the clause see Blackwood Gas Act, 1909, s. 74.

Power to require anti-fluctuators to be fixed to gas engines.—This clause is found in most modern Gas Acts, *e.g.*, Blackwood Gas Act, 1909, s. 72.

Power to purchase, take on lease, or erect dwelling houses for persons in the employ of the company.—Many recent Acts contain a clause to this effect. The following section is taken from the Littlehampton Gas Act, 1909, s. 64:

> "The company may upon any lands for the time being belonging or leased to them erect, fit up, maintain, and let houses, cottages, and buildings, for the officers and servants employed by the company for the purposes of their undertaking."

Power to lay pipes in streets for "ancillary purposes," e.g., the conveyance of oil.—The following are instances in which this power has been granted: Enfield Gas Act, 1898, s. 45; Cleethorpes Gas Act, 1900, s. 37; Kingston-upon-Thames Gas Act, 1900, s. 44 (this section is qualified by the words, "with the consent of the local authority"); Burgess Hill and St. John's Common Gas Act, 1903, s. 61 (with the consent of the local authority); Derby Gas Act, 1903, s. 44 (provided that the company shall not under the powers of this section break up any street in the borough of Derby without the consent of the corporation); Gorleston and Southtown Gas Act, 1903, s. 30 (with the consent of the corporation, which consent shall not be unreasonably withheld); Maidstone Gas Act, 1907, s. 9 (with the consent of the corporation); Blackburn Corporation Act, 1908, s. 48; Draycott Gas Act, 1908, s. 38; Gosport Gas Act, 1908, s. 35; Llanelly Gas Act, 1908, s. 22; Southwell District Gas Act, 1908, s. 65; Wath and Bolton Gas Board, 1908, s. 55; Widnes Corporation Act, 1908, s. 5; Aldershot Gas etc. Act, 1909, s. 20; Blackwood Gas Act, 1909, s. 63; Bury Corporation Act, 1909, s. 11; Heckmondwike and Liversedge Gas Act, 1909, s. 56; Leyland Gas Act, 1909, s. 11; Lisburn Urban District Council Act, 1909, s. 37; Oldham Corporation Act, 1909, s. 71; Risca Urban District Council Act, 1909, s. 66; and Swinton and Mexborough Gas Board Act, 1909, s. 54.

Appliances let on hire though fixed to premises to remain property of company.—A clause to this effect is frequently found in recent Gas Acts. The clause provides that the amount of the assessment for rating of premises on which the fittings are fixed shall not be affected. See, *e.g.*, South Metropolitan Gas Act, 1905, s. 8; South Suburban Gas Act, 1905, s. 3; Annfield Plain and District Gas Act, 1907, s. 49; Boston Spa Gas Act, 1907, s. 67; Falmouth Gas Act, 1907, s. 28; Llandrindod Wells Gas Act, 1907, s. 44; Pontypridd Urban District Council Act, 1907, s. 10; Rhymney and Aber Valleys Gas and Water Act, 1908, s. 57; Swinton and Mexborough Gas Act, 1908, s. 68; Aldershot Gas, Water and District Lighting Act, 1909, s. 85; Alliance and Dublin Gas Act, 1909, s. 43; Blackwood Gas Act, 1909, s. 67; Harrogate Gas Act, 1909, s. 36; Lisburn Urban District Council Act, 1909, s. 22; Pontypool Gas and Water Act, 1909, s. 53; Risca Urban District Council Act, 1909, s. 49; Swinton and Mexborough Gas Board Act, 1909, s. 38; and Wells Gas Act, 1909, s. 34.

Entry and removal of apparatus from premises where supply has been lawfully cut off.—For an instance of a section giving this power see Alliance and Dublin Gas Act, 1909, s. 47.

Power to lay pipes, etc., against buildings.—The following clause appears in the Greenock Corporation Act, 1909, s. 329:

> "The corporation, with the consent of the owner or occupier of any building, may lay any pipe or other apparatus into, through, or against such building for the purpose of lighting it, and may with the like consent provide and set up on or against any such building any apparatus necessary for securing to such building a proper supply of gas, and for measuring and ascertaining the extent of such supply, and may from time to time with the like consent repair replace, alter or discontinue and remove any such pipe or apparatus."

Power to carry private pipe across intervening building.—The Greenock Corporation Act, 1909, also contains the following section (s. 330):—

> "Notwithstanding anything contained in sect. 7 of the Gasworks Clauses Act, 1847, where any building belongs in portions to different owners, the owner of any portion shall be entitled to carry a pipe for supplying such portion with gas across or along any other portion of such building where such supply cannot be otherwise obtained. Provided always that where any damage shall be caused by such operation, the person performing the operation shall be bound to pay such damage as the amount thereof shall be fixed and ascertained by arbitration."

Power to take portions only of properties where same could be severed from the remainder without material detriment thereto.—See, *e.g.*, Pontypool Gas and Water Act, 1909, s. 43.

Power to retain, sell, lease, etc., superfluous land, notwithstanding Lands Clauses Acts.—Such a clause is frequently found in Water

Acts, and it has recently been inserted in some Gas Acts. See, *e.g.*, South Shields Gas Act, 1904, s. 24; Worthing Gas Act, 1907, s. 9; Alliance and Dublin Gas Act, 1909, s. 14.

Power to grant pensions or gratuities to officers and servants disabled or incapacitated.—See, *e.g.*, Selby Urban District Council Act, 1904, s. 187; Accrington District Gas and Water Board Act, 1905, s. 28; Perth Corporation Gas Order Confirmation Act, 1906, s. 27; Harrogate Gas Act, 1909, s. 27.

Power to directors to fix the remuneration of secretary.—A clause for this purpose has been inserted in some recent Gas Acts, *e.g.*, Bishops Stortford Gas Act, 1904, s. 74; Colney Hatch Gas Act, 1904, s. 48; Sheppey Gas Act, 1904, s. 38; Northampton Gas Provisional Order, 1904, s. 33; Berkhampstead Gas Act, 1905, s. 80; Brentwood Gas Act, 1905, s. 45; Croydon Gas Act, 1905, s. 38; East Cowes Gas Act, 1905, s. 72; Derby Gas Act, 1906, s. 13; Cardiff Gas Act, 1906, s. 46; Heckmondwike and Liversedge Gas Act, 1909, s. 43 (applicable to appointment, removal, etc., of all officers and servants).

Qualification of auditors.—The following section is taken from the Heckmondwike and Liversedge Gas Act, 1909 (s. 42):

> "Notwithstanding anything contained in the Companies Clauses Consolidation Act, 1845, as from the 1st day of January, 1910, no person shall be appointed as auditor of the accounts of the company who shall not be either a chartered accountant or an incorporated accountant, and it shall not be necessary for such person to be a shareholder in the company."

Other instances in which a similar provision has been inserted are Berkhampstead Gas Act, 1905, s. 48; Brentwood Gas Act, 1905, s. 48; East Cowes Gas Act, 1905, s. 48; Crediton Gas Act, 1906, s. 50; Annfield Plain and District Gas Act, 1907, s. 30; Southwell District Gas Act, 1908, s. 49; Blackwood Gas Act, 1909, s. 44.

The accounts of all County Councils, the London Borough Councils, and Urban District Councils, are subject to audit by the district auditors of the Local Government Board. In several Corporation Acts of recent years provision is made for the audit of the corporation accounts by the district auditors. The instances, together with a model clause dealing with this matter, are cited in the Model Bills and Clauses, Miscellaneous (clause 19 and note). They are Tunbridge Wells (1890), Bournemouth (1892), Southend-on-Sea (1895), Plymouth (1904), Swindon (1904), Merthyr Tydfil (1905), Cheltenham (1905), Poole (1905), Chelmsford (1907), Monmouth (1908), East Ham (1908), Margate (1908), Shrewsbury (1908). The Corporation of Folkestone by their Act of 1901 have power to adopt audit by a district auditor on resolution of the council. The cases referred to do not relate exclusively to corporations owning gas undertakings.

Where statutory powers are conferred upon a limited company, the Act of Parliament must be registered. This applies not only to Bills promoted by a limited company, but also to Bills promoted by a local authority. See Model Bills and Clauses, Session 1910, Miscellaneous, clause 29.

Powers of certain gas companies to supply electricity.

In a few cases power to supply electricity has been granted to statutory gas companies. Provision is always made for the keeping of separate accounts, both as regards capital and revenue, of the gas and electricity undertakings. See Andover Lighting and Power Act, 1905; Ascot District Gas and Electricity Act, 1906; Aldershot, Gas, Water and District Lighting Act, 1909; and York Town and Blackwater Gas (Electric Lighting, etc.) Act, 1909.

Locus standi of statutory gas companies to oppose Electricity Bills and Orders.

The Court of Referees in the *Ferndale Case*, 1 Saund. and Aust., 314, have held that a statutory gas company is entitled to a *locus standi* to oppose a Provisional Order under the Electric Lighting Acts; and they have also decided that a non-statutory gas company is equally entitled to a *locus standi* to oppose on the ground of competition. Grangemouth Electric Lighting Provisional Order, 1905. Jl. G. L., June 6th, 1905, p. 727; 1 Saund. and Bidder, 18.

The Cannock, Hednesford and District Gas Co. Ltd., were granted a *locus* to oppose the Shropshire and Worcestershire Electric Power Bill, 1905. *Electrical Review*, 10th March, 1905, p. 390.

The Barnet Gas and Water Company and the Southgate and District Gas Company obtained a *locus standi* to oppose the Finchley Urban District Bill, 1908, relating to the supply of electricity within the statutory limits of those companies. The North Middlesex Gas Company, whose limits were not affected, were refused leave to oppose as ratepayers.

METROPOLIS GAS.

Metropolis Gas Act, 1860.

In the year 1860 the Metropolis Gas Act, 1860, was passed for the purpose of better regulating the supply of gas to the metropolis. In the preamble of that Act it is recited that the various companies therein named (thirteen in number) were respectively incorporated under the authority of Parliament for the purpose of supplying several districts of the metropolis with gas, "and that the said companies, instead of supplying gas by several mains in the same district, have agreed, as far as possible, each one to confine its supply to a separate district, in order to economise capital and avoid the too frequent opening of public streets." The Act then proceeded to enact that the limits of each of the said companies should be the respective districts defined upon four duplicate maps deposited with the respective clerks of the peace for the counties of Middlesex, London, Surrey, and Kent (see s. 6, p. 277). Prior to the passing of this Act there was no obligation on the several companies to supply gas to consumers, though they were authorised to contract. The Act of 1860 made the supply compulsory under the conditions prescribed in s. 14 (see p. 280). The Act also contained powers to the Secretary of State for the Home Department (which powers were afterwards transferred to the Board of Trade) to appoint an inspector on complaint being made to him as to quantity or quality of the gas (see ss. 7—12, p. 279). It also contained enactments relating to the illuminating power and purity of the gas, the appointment of gas examiners by the local authorities, and complaint to a magistrate as to the supply of gas (see ss. 25—34, p. 282); and it further provided for appeal by consumers to the Home Secretary (afterwards to the Board of Trade) on rise of price of gas, and authorised the issue of a form of accounts (see ss. 40, 41, p. 284). Sections 7—12, 25—34, and ss. 40, 41 were afterwards repealed and fresh enactments have been substituted in their place, as will presently appear. By successive amalgamations authorised by later Acts, the thirteen companies named in the Act of 1860 have been reduced to three. These are the Gas Light and Coke Company, the Commercial Gas Company, and the South Metropolitan Gas Company.

Intrusion of one company into the district of another.

The effect of the Metropolis Gas Act, 1860, in assigning a separate district to each company is illustrated by the decision in the *Gaslight and Coke Co.* v. *South Metropolitan Gas Co.*, the facts of which will be found fully stated at p. 278.

City of London Gas Act, 1868.

At the time of the passing of the City of London Gas Act, 1868, the city of London was supplied by three different gas companies, viz., the Gas Light and Coke Co., the City of London Gas Light and Coke Co., and the Great Central Gas Consumers Co. The main objects of the Act of 1868 were—(1) to give power to the corporation to purchase the undertakings, a purpose which, though authorised, was not carried out; (2) the amalgamation of the three companies, a purpose which was carried out; (3) the appointment by the Board of Trade of gas referees; and (4) the making of better provision in regard to the illuminating power and purity of the gas, the daily testing of the same, the establishment of testing places, and the appointment of a gas examiner and a chief gas examiner and also of an auditor of the accounts of the companies, and the prescribing by the auditor from time to time of a uniform form of accounts. It was further enacted that if application were made to the Board of Trade by any company or by the corporation for a revision of the scale of illuminating power and price, the Board of Trade shall "appoint not less than two nor more than three competent and impartial persons to be commissioners for the purpose . . ."

Gas referees first appointed, 1868.

A notable feature of the City of London Gas Act, 1868, was the appointment of gas referees. By sect. 29, the Board of Trade were required to "appoint three competent and impartial persons, one at least of them having practical knowledge and experience in the manufacture and supply of gas, who shall be called the gas referees." By s. 34, the gas referees were required to inspect the "works of the companies and investigate the processes of manufacture carried on therein, with the view of ascertaining the means adopted therein for purifying gas and for preventing nuisance, and may from time to time apply all such tests as they think expedient, at the works of the companies or elsewhere, for ascertaining the amount of sulphur and ammonia and of compounds thereof or other impurity with which gas supplied by them is charged." By s. 36, it was provided that the gas referees should from time to time ascertain with what degree of purity each company could reasonably be required to make and supply gas continuously without occasioning a nuisance to the neighbourhood in which the works were situate and should thereupon prescribe the maximum amount of impurity in each form with which gas supplied by the company should be allowed to be charged. Amongst the other duties assigned to them was power to prescribe and certify from time to time the mode to be adopted for testing and recording the purity of the gas supplied by the companies, and the number of the times of testing (s. 37), and the mode of ascertaining the quantity of gas consumed by the public lamps (s. 38). Sect. 39 provided that gas supplied by the companies should be wholly free from sulphuretted hydrogen, and that nothing in the Act should authorise the gas referees "to allow of gas being charged with any amount of impurity in that form."

The gas referees were further required from time to time to prescribe and certify what testing places and what apparatus therein for testing the illuminating power and purity of gas should be provided by each company (s. 40); and they were further required to prescribe the burner for testing the illuminating power of the gas (s. 43). The testings for illuminating power were required to be made "three times at least each day" (s. 47); the average of all the testings on each day being deemed to represent the illuminating power on that day (s. 48).

Gas Light and Coke Company's Act, 1868.

In the Session of 1868, the Gas Light and Coke Company introduced a Bill for the purpose of consolidating and amending the Acts relating to that company. It passed into law as the Gas Light and Coke Company's Act, 1868. By s. 109, it was provided that the company and their undertaking should be subject to the City of London Gas Act, 1868, "without as well as within the City of London and the liberties thereof, and such Act shall extend to the whole undertaking of the company"; and that the Metropolitan Board of Works should have, outside the limits of the City of London, all the rights and powers given to the City Corporation within the city. By s. 10, the company were to continue subject to the Metropolis Gas Act, 1860, so far as not varied by the Act. See also s. 110 to the effect that the company are not to be exempt from the provisions of general Acts, including the Metropolis Gas Act, 1860.

Whole area of the company made subject to the City of London Gas Act, 1868.

Effect of legislation to end of Session 1868.

The result of legislation to the end of Session 1868, was that the whole area of the undertaking of the Gas Light and Coke Company ceased to be under the repealed sections (ss. 7—12, 25—34, 40, 41) of the Act of 1860, and became subject to the new provisions of the City of London Gas Act, 1868, while the Commercial Gas Company and the South Metropolitan Company remained under the Metropolis Gas Act, 1860, in its entirety. The City of London Gas Light and Coke Company and the Great Central Gas Consumers Company became amalgamated with the Gas Light and Coke Company in 1870.

Provisions as to amalgamation.

The sections of the Act of 1868 authorising the three companies therein named to amalgamate, will be found at p. 303, *post.* The machinery provided was the submission of a scheme to the Board of Trade for approval, and the subsequent confirmation "whether modified or not" by Order in Council. This machinery was afterwards, by various special Acts, extended to other companies: and the various amalgamations ultimately effected will be found, *post*, p. 66.

South Metropolitan Gas Act, 1869.

In the Session of 1869, the South Metropolitan Company promoted a Bill for further capital. It passed into law as "The South Metropolitan Gaslight and Coke Company's Act, 1869." By s. 4 and the schedule it repealed, so far as they relate to the South Metropolitan Company, the whole of the sections of the

Act of 1860, which had been repealed by the City of London Gas Act, 1868, so far as regards that company, viz., ss. 7—12, 25—34, 40, 41; and it introduced in substitution the various sections which had been inserted in the City of London Gas Act, 1868.

Gas referees appointed in relation to South Metropolitan and Commercial Companies.

By this Act of 1869, s. 15, the Board of Trade were authorised to appoint gas referees in relation to the South Metropolitan Company. By the Commercial Gas Act, 1875, s. 22, the Board of Trade were also authorised to appoint gas referees in relation to that company.

Gas Light and Coke Act, 1871.

The Gas Light and Coke Company's Act, 1871, authorised the amalgamation of the Equitable Gaslight Company with that company. It further provided as follows:

> Section 56.—Sections eighteen to twenty-four (inclusive) of the City of London Gas Act, 1868, shall, taken in connexion with the amalgamated company, extend and apply to the several gas companies supplying gas within the metropolis, as defined in the Metropolis Gas Act, 1860.

Commercial Gas Act, 1875.

By the Commercial Gas Act, 1875, the Commercial Gas Company brought itself into line with the Gas Light and Coke Company and the South Metropolitan Company in regard to the new legislation. Sect. 22 provided for the appointment of gas referees "in relation to the Commercial Company." It repealed, *inter alia*, ss. 7—12, 25—34, and 40, 41, of the Metropolis Gas Act, 1860, and adopted the substituted sections of the City of London Gas Act, 1868, except with reference to revision of price and appointment of commissioners for that purpose.

Sliding scale first introduced, 1875.

The Commercial Gas Act, 1875, first introduced the sliding scale. In the session of that year the Metropolitan Board of Works introduced three Bills: the first to erect competing gasworks; the second for the purchase of the then existing gas undertakings in the metropolis (then nine in number); and the third for imposing more stringent regulations on the companies. The first two were dropped. The third, along with the Bill of the Commercial Gas Company and another of the Imperial Gas Company (which was afterwards dropped), were referred to a hybrid Committee of the House of Commons, presided over by Mr. W. E. Forster. The chief points of the inquiry related to auction clauses (which were not then absolutely new) and to the sliding scale which Mr. George Livesey and others advocated. The Committee made a report (Parliamentary Paper, 1875, No. 281). In the result the Commercial Gas Company got their Act with the sliding scale and auction clauses.

The Act fixed a standard price of 3*s.* 9*d.*, with power to the company to increase or diminish that price, subject to a decrease or increase in the standard rates of dividend as defined by the Act, to be calculated as follows:

> For every penny or part of a penny charged in excess or in diminution of such standard price in any year, the standard rate of dividend shall for such year be reduced or increased by five shillings in the hundred pounds per annum.

The Act also gave power to the company to form an insurance fund and a reserve fund. The Act also authorised amalgamation with the Ratcliff Gaslight and Coke Company. See the unrepealed portions of this Act, *post*, p. 308. See the later provisions as to standard price, etc., at pp. 62 *et seq.*, *post.*

Gas Light and Coke Act, 1876.

By their Act of 1876 the Gas Light and Coke Company came under the sliding scale, Parliament fixing a standard price of 3*s.* 9*d.*, with power to form an insurance fund and a reserve fund. The Act repealed the following portions of the City of London Gas Act, 1868, viz., ss. 25—28 (relating to dividends); ss. 33—84, relating to testing for illuminating power and purity, illuminating power and price, reports of chief gas examiner, forfeitures, accounts, and pressure of gas. It then proceeded to enact fresh provisions with regard to all these matters. The Act of 1876 contains no fresh enactment with regard to the appointment of gas referees, because the powers in that behalf conferred upon the Board of Trade in 1868 were still in operation. See the unrepealed portions of this Act, *post*, p. 321. See the later provisions as to standard price, illuminating power, testing, etc., at p. 65, *post.*

The Act of 1876 recites the various amalgamations of other companies with the Gas Light and Coke Company, including the Imperial Gaslight and Coke Company and the Independent Gaslight and Coke Company. As regards the former, the Imperial Gas Company had by their Act of 1869 substituted the Board of Trade for the Home Secretary under the Metropolis Gas Act, 1860, and repealed ss. 7—12, 25—34, 37, 40, 41, of that Act. As regards the Independent Gaslight and Coke Company, the same repeals are effected in regard to it by s. 8 of the Act of 1876.

South Metropolitan Gas Act, 1876.

By their Act of 1876 the South Metropolitan Company were placed under the sliding scale, the standard price in their case being fixed at 3*s.* 6*d.* The Act repealed large portions of the Act of 1869 (ss. 13 and 14 and ss. 19—66 inclusive). Among these sections were the sections prescribing illuminating power and pressure, and the various sections connected with testing for illuminating power, purity and pressure, auditor and accounts. Accordingly, the Act of 1876 re-enacted provisions in regard to these matters (ss. 26—61 inclusive, as to which, see p. 332, *post*). See the later provisions as to standard price and other matters referred to on pp. 62 *et seq.*, *post.*

Sixteen-candle gas prescribed for the three companies.

By the Commercial Gas Act, 1875, the Commercial Company were required to afford an illuminating power of sixteen candles. By the Gas Light and Coke Company's Act, 1876, an illuminating power of sixteen candles was also required in the case of common gas. (The City of London Gas Act, 1868, s. 53, had required sixteen-candle gas as from January 1st, 1870.) By the South Metropolitan Gas Act, 1876, sixteen-candle gas was also required. By the South Metropolitan Gas Act, 1900, the illuminating power of gas supplied by that company was reduced, on and after July 1st, 1901, to fifteen candles, and on and after July 1st, 1905, to fourteen candles; corresponding reductions in the standard price being made (see *post*, p. 339). See the further provisions hereon as to all these companies referred to at p. 64, *post.*

Act of 1880.

In 1880 an Act was passed entitled "The Gas Light and Coke and other Gas Companies Acts Amendment Act, 1880." The Act (s. 4) extends to the Gas Light and Coke Company, the Commercial Gas Company, and the South Metropolitan Gas Company, which three companies had then, by successive amalgamations, absorbed all the other gas undertakings supplying the metropolis. It proceeded on the preamble that it was expedient to amend the provisions of the Acts of 1875 and 1876 above mentioned, with respect to the testing of the gas supplied by the said companies respectively, and with respect to the forfeitures fixed by the said Acts, and in other respects. It repealed the various sections of the Commercial Gas Act, 1875, the Gas Light and Coke Company Act, 1876, and the South Metropolitan Gas Act, 1876, relating to the above matters, and substituted new enactments (see *post*, pp. 333 *et seq.*). See now the later provisions as to these matters referred to at pp. 64 *et seq.*, *post.*

South Metropolitan Gas Act, 1881.

By the South Metropolitan Gas Act, 1881, the company obtained power to establish new works at a place known as the "Greenwich Marshes," and also obtained power to raise further capital.

South Metropolitan Gas Act, 1882.

By the South Metropolitan Gas Act, 1882, the company obtained power to purchase certain additional lands and construct works, and also obtained an enlargement of their borrowing powers.

South Metropolitan Gas Act, 1896.

By the South Metropolitan Gas Act, 1896, the company were authorised to convert their then existing stocks (not including debenture stock) into a 4 per cent. stock, subject to the sliding scale. Sect. 16 provided for decrease and increase of the dividends payable by the company, according to increase or decrease in the standard price of gas charged by the company. See now the Act of 1900, *post*, p. 339. The Act of 1896 also authorised the conversion of the company's 5 per cent. debenture stock into a substituted debenture stock at less than 5 per cent., but not less than 3 per cent. This conversion of debenture stock was authorised to be effected by a resolution of the directors. This Act of 1896 recited in the preamble that "by reason of the system of the company under which persons in their employ receive by way of bonus a share in the profits of the company many of such persons hold ordinary stock in the capital of the company and it is expedient that provision should be made for the election by such persons of a director or directors to take part in the management of the affairs of the company." Accordingly, by s. 19 of the Act, the company were authorised, subject to the approval of the Board of Trade, to prepare a scheme for the purpose of enabling the employees of the company holding ordinary stock of the company to elect one or more of their number (but not exceeding three) to be a director or directors of the company. See also the South Suburban Gas Act, 1904, s. 5.

Profit sharing.

Employees' directors.

South Metropolitan Gas Act, 1897.

By the South Metropolitan Gas Act, 1897, the qualification of directors was altered.

Gas Light and Coke Act, 1898—conversion of debenture and capital stocks.

By the Gas Light and Coke Company's (Capital Consolidation) Act, 1898, the company were authorised to convert their existing debenture and capital stocks,—the bulk of the preference stocks into 4 per cent., the debenture stocks into 3 per cent., and the ordinary stock into 4 per cent. By s. 15 corresponding alterations were made in the sliding scale enacted by the Act of 1876, but see now the later provisions hereon referred to at p. 65, *post*. By s. 19 it is provided as follows:

> "Whereas the conversion by this Act authorised may affect the market prices of the company's stocks therefore be it enacted that in the event of any purchase of the company's undertaking by a public or local authority the market prices of the company's stocks shall not be taken into consideration in determining the price to be paid for the undertaking."

Select Committee of 1899 as to powers of charge.

In 1899 a Select Committee (of which Sir James Rankin was Chairman) was appointed to inquire into the powers of charge conferred by Parliament on the metropolitan gas companies, and to report as to the method in which those powers have been exercised, having regard to the difference of price charged by the various companies. The Committee examined witnesses from the Board of Trade, the London County Council, the Corporation of the City of London, several of the vestries of the metropolis, and representatives of all three of the gas companies supplying the metropolis. In their Report (Parliamentary Paper, No. 294 of 1899), the Committee made the following recommendations:

Recommendations of the Committee.

"(1.) That whenever any of the Metropolitan gas companies again come to Parliament for an extension or alteration of their capital powers, a revision of the sliding scale should take place, and that the standard price should be reduced to 3*s*. 3*d*. to carry the standard dividend of 10 per cent.; and that the existing scale of increase and decrease for dividend of ¼ per cent. for every penny of decrease or increase of price below or above 3*s*. 3*d*. be maintained, and that a secondary or additional scale be imposed which should permit of an increase or decrease of dividend over and above that regulated by the present scale of ¼ per cent. for every complete 3*d*. of decrease or increase below or above the standard price of 3*s*. 3*d*.

"(2.) That the area south of the river Thames, at present part of the district of the Gas Light and Coke Company, acquired by them from the absorption of the London Gas Company in 1883, should be transferred from the Gas Light and Coke Company to the South Metropolitan Gas Company, fair and reasonable price being paid by the latter to the former company for their property in the southern area.

"(3.) That the charge made by the Gas Light and Coke Company for the rents of automatic meters and stoves should be the same to consumers north and south of the Thames for fittings of the same quality and capacity, and that the prices charged by all the companies for the slot meters and fittings require regulation, having regard to the fact that the business is a new one, and has extended with extraordinary rapidity throughout the metropolis.

"(4.) That capital powers should not be granted to any gas company for more than five years if and when new capital is required, and that Parliament should revise the sliding scale, either by way of increase or decrease, when any application for new capital is made, if the circumstances of the times or the conditions of the company appear to require it.

"(5.) That an effort should be made by any company having obsolete or unproductive capital to redeem such capital by sinking fund or otherwise."

South Metropolitan Gas Act, 1900.

Reduction of illuminating power and standard price.

By the South Metropolitan Gas Act, 1900, it was provided that after July 1st, 1901, the illuminating power of the gas supplied by the company should be fifteen candles, and the standard price should be 3*s.* 2*d.*, and that after July 1st, 1905, the illuminating power should be fourteen candles, and the standard price 3*s.* 1*d.*; with liberty upon certain conditions to accelerate the reduction of the illuminating power from fifteen candles to fourteen candles. The Act then proceeded to make corresponding provisions for decrease and increase of the dividend payable by the company according to increase or decrease in the price of gas supplied by the company. See more fully, *post*, p. 339.

South Metropolitan Gas Act, 1901.

By the South Metropolitan Gas Act, 1901, that company were authorised to raise additional capital, and also to purchase by agreement so much of the undertaking of the Gas Light and Coke Company as is situate on the south side of the Thames. The provisions of this Act as to the raising of additional capital were amended by the South Metropolitan Gas Act, 1902.

Commercial Gas Act, 1902.

By the Commercial Gas Act, 1902, (2 Edw. 7, c. cxxxiv.) the capital stocks, and the debenture stock of the company were converted into stocks of other nominal amounts respectively but yielding equivalent amounts of dividend or interest. The illuminating power was reduced to fourteen candles and the standard price which was fixed by s. 53 of their Act of 1875, at 3*s.* 9*d.* was reduced to 3*s.* 3*d.* with power to the company to increase or diminish such standard price subject to the decrease or increase in the standard rates of dividend as defined by the Act (see s. 12). Provision was also made for the raising of further money by the creation and issue of capital stock, and debenture stock, the capital stock to be offered in the first instance to consumers of gas supplied by and to employees of the company.

Testing of fourteen-candle gas.

The Bill of the Commercial Gas Company contained a clause modifying the provisions of their Act of 1875 relating to the testing of gas so as to make the like provisions for the testing of fourteen-candle power gas as were already in force with respect to the supply of gas of that illuminating power in other parts of London, but in view of representations made during the passage of the Bill through Parliament on behalf of the London County Council the company agreed to withdraw the clause in the belief that the gas referees would have full power to prescribe the apparatus to be used in and method of testing gas appropriate to the candle power as reduced as aforesaid. The gas referees, however, held that in testing the gas they were bound by the provisions of the Act of 1875 both with regard to the burner to be used and the rate at which the gas should be consumed in such burner.

Commercial Gas Act, 1903.

The Board of Trade were about to appoint a departmental committee to inquire (*inter alia*) into the question of existing methods of testing the gas supplied within the administrative county of London; and temporary provision was therefore made by the Commercial Gas Act, 1903, for an amendment with respect to the testing of the gas supplied by the company.

Gas Light and Coke Act, 1903.

Alteration of standard price.

By the Gas Light and Coke Company's Act, 1903 (3 Edw. 7, c. xli.) the company was authorised to create and issue debenture stock not exceeding the nominal amount of £750,000. By s. 8 of the Act the standard price was reduced from 3*s*. 9*d*. to 3*s*. 4*d*. with a new sliding scale as to dividend (see now Act of 1909, *post*).

Departmental Committee of 1904 on testing of gas in London.

The Departmental Committee of the Board of Trade, which was appointed to inquire and report as to the statutory requirements relating to the illuminating power and purity of gas supplied by the metropolitan gas companies, and as to the methods then adopted for testing the same, and as to whether any alteration was desirable in such requirements or methods, sat for twenty-one days and heard evidence from the Metropolitan Gas Referees, the representatives of the London County Council, the Corporation of the City of London, and each of the gas companies concerned, viz., Gas Light and Coke Co., the South Metropolitan Gas Co., and the Commercial Gas Co. They made their report, dated May 19th, 1904, Parly. Paper, 1904, Cd. 2118. The report concludes with the following recommendations:

Recommendations of the Committee.

(*a*) That the standard burner to be used for testing the illuminating power of all qualities of gas should remain, as at present, the Sugg's London (No. 1) Argand burner, and that the chimney to be used therewith should be of uniform size, namely, six inches long and one and seven-eighths inches internal diameter.

(*b*) That for the purpose of determining the nominal illuminating power of gas of any quality, the gas should be burnt in the standard burner at the rate of 5 cubic feet an hour.

(*c*) That provision should be made for official testing of illuminating power in a flat flame burner, of a kind to be prescribed by the gas referees, and that the result of such tests be recorded and notified to the various authorities and companies concerned and to the Board of Trade.

(*d*) That official tests of the calorific power of the gas supplied by each company should also be made, recorded and notified as above.

(*e*) That the existing statutory provision which requires the gas to be wholly free from sulphuretted hydrogen (which is in fact impracticable) should be modified, and that for the future the test which the gas should be required to pass should not be more severe than that specified in the schedule to the Gasworks Clauses Act, 1871.

(*f*) That the obligations placed upon the companies with regard to the removal of the sulphur impurities (other than sulphuretted hydrogen) should be abolished, but that testing for information only should continue to be made in such manner and to such extent as may be prescribed by the gas referees.

(*g*) That the gas to be tested should be brought direct from the main to the testing room by a single service pipe without tap, branch or connection.

(*h*) That in case of difference between the gas companies and the gas referees as to the reasonableness of any requirements of the referees, the decision of the chief gas examiner should be conclusive.

(*j*) That except as may be involved in the foregoing recommendations, the powers and duties of the gas referees should remain as at present.

(*k*) That it should not be obligatory upon the controlling authority to test on Sundays.

(*l*) That the duties of the chief gas examiner should include the hearing of all applications by the controlling authority for the recovery of forfeitures in respect of illuminating power, purity, or pressure, and the assessment of the forfeitures to be paid by the company in all cases except those in which he is unable to certify that the default is not substantial, or that it is not due to careless conduct of the works.

Legislation of 1905.

In the Session of 1905, the London County Council promoted a Bill to carry out the recommendations of the Board of Trade Departmental Committee. This was opposed by the metropolitan gas companies, who also promoted a Bill of their own. In the result, a Committee of the House of Commons (Mr. Cawley, Chairman) resolved to uphold the recommendations of the Departmental Committee, and passed the Bill of the London County Council, and rejected the Bill promoted by the companies.

In the House of Lords, some of the provisions of the Bill were modified, and the Bill became the London Gas Act, 1905.

London Gas Act, 1905.

The following are, shortly stated, the main provisions of the Act:

Section 3.—The gas referees are to prescribe the burner for testing the illuminating power of gas and the chimney (if any) to be used with the burner. The burner so prescribed is to be of such a pattern (not being an incandescent or similar burner) as shall be practicable for use by the consumer, and the burner and chimney (if any) shall be the most suitable for obtaining and in making the test shall be so used as to obtain from the gas when consumed at the rate of five cubic feet an hour the greatest amount of light.

Section 4 (1).—The gas supplied by the Gas Light and Coke Company shall be such as to produce when consumed at the rate of five cubic feet an hour in the prescribed burner a light equal in intensity to sixteen sperm candles of six to the pound, and each consuming 120 grains an hour.

Section 4 (2).—The gas supplied by the South Metropolitan and Commercial Gas Companies shall be such as to produce when consumed in the above manner a light equal in intensity to the light produced by fourteen sperm candles.

Section 4 (3).—If on any one day at any testing place the illuminating power is deficient to an extent not exceeding one candle, the average of the testings at that place on that day and the preceding and following day is to be deemed to represent the illuminating power on that particular day.

Section 5.—Gas examiners are at the places and in the manner prescribed by the gas referees to make testings to ascertain (i.) the calorific power; (ii.) the purity as regards sulphur other than sulphuretted hydrogen; and (iii.) the illuminating power as ascertained by means of a flat flame burner to be prescribed by the gas referees which shall be of the best available pattern. The companies are not to be liable to forfeitures in respect of testings made under this section.

Section 6.—Gas supplied is not to exhibit any trace of sulphuretted hydrogen when tested in the mode prescribed by the gas referees, such mode not to be more stringent than that prescribed in Schedule A of the Gasworks Clauses Act, 1871, and sect. 15 of the Gas Light and Coke and other Gas Companies Acts Amendment Act, 1880, is to apply accordingly

Section 7.—No liability for forfeiture in respect of sulphur impurities other than sulphuretted hydrogen, and the gas referees are not to prescribe or certify the amount of sulphur impurities other than sulphuretted hydrogen.

Section 8.—Provision is hereby made as to pipes connecting mains with testing places.

Section 9.—Provision is hereby made for an appeal to the chief gas examiner if any company is aggrieved by any prescription or certificate of the gas referees.

Section 10.—Testings on Sundays are not obligatory.

Sections 11 and 12.—Provision is made, in substitution of the provisions of sect. 12 of the Act of 1880, for an appeal to the chief gas examiner as to any report of a gas examiner. If on such appeal the chief gas examiner certifies that any default of the company is not substantial or not due to careless conduct, proceedings are not to be taken before a petty sessional court for the determination of the amount of the forfeiture to be paid, but the chief gas examiner, if requested so to do by the controlling authority, may determine, subject to the provisions of sect. 14 of the Act of 1880, the amount of forfeiture to be paid, such forfeiture to be recoverable summarily as a civil debt.

Section 15 imposes a penalty for neglect to comply with prescriptions of gas referees, and the remaining sections deal with matters of procedure only.

Gas Light and Coke Act, 1909

Under the Gas Light and Coke Company's Act, 1909 (9 Edw. 7, c. lxxxvii.), the Gas Light and Coke Company acquired the undertaking of the West Ham Gas Company. By the same Act (s. 34) the standard rate of dividend on the ordinary stock of the Gas Light Company was fixed at 4 per cent. per annum, subject to increase or reduction in accordance with the scale therein set forth, and the standard price to be charged for gas was reduced to 3*s.* 2*d.*, with a provision for the increase or reduction of the price subject to the reduction or increase in the dividend payable on ordinary stock as therein mentioned. The standard for the illuminating power of the company's gas was also (by s. 38) reduced from sixteen to fourteen candles, and the fourteen-candle standard thereby became applicable throughout London.

Standard of calorific power

The company assented to the insertion in this Act of a standard of calorific power with penal testing. The agreement for its insertion was a term in the settlement of the opposition to the proposals in the Bill to acquire the West Ham Company's undertaking and to reduce the standard for illuminating power, and cannot be regarded as a parliamentary precedent. In the same session, Parliament declined to insert a similar provision in the Coatbridge Gas Order.

The Gas Light and Coke Company's Act, 1909, is set out at p. 350, *post.*

Amalgamations.

Since the passing of the Metropolis Gas Act, 1860, the following companies have become amalgamated with the Gas Light and Coke Company, viz.: (1) the City of London Gaslight and Coke Co. (1870); (2) the Great Central Gas Consumers Co. (1870); (3) the Western Gaslight Co., Limited (1872); (4) the Imperial Gaslight and Coke Co. (1876); (5) the Independent Gaslight and Coke Co. (1876); (6) the London Gaslight Co. (1883); (7) the Victoria Docks Gas Co. (1871); (8) the Equitable Gas Co. (1871); (9) West Ham Gas Company (1909). Of these amalgamations, Nos. (1) and (2) were effected under the powers of the City of London Gas Act, 1868; Nos. (3)—(6) under the powers of that Act and the Gas Light and Coke Company's Act, 1871; Nos. (7) and (8) under the powers of the Gas Light and Coke Company's Act of 1870 and 1871 respectively and No. 9 under the Act of 1909. See Schedule B. to the Gas Light and Coke Company's (Capital Consolidation) Act, 1898. By s. 39 of the scheme sanctioned by Order in Council, dated May 22nd, 1883, whereby the London Gaslight Company became amalgamated with the Gas Light and Coke Company, it is provided that "the united company shall not charge in the districts of the London company south of the river Thames a higher price per 1,000 cubic feet of sixteen-candle gas, either for public or private lighting, than the price for the time being charged by the South Metropolitan Gas Company for gas of the same illuminating power." By s. 44 of the Gas Light and Coke Company's Act, 1909, the words "fourteen-candle gas" were substituted for the words "sixteen-candle gas" in the last-mentioned section.

With the Commercial Gas Company has been amalgamated the Ratcliff Gaslight and Coke Company. This was sanctioned by the Commercial Gas Act, 1875.

By the South Metropolitan Company's Act of 1876, s. 64, that company were authorised to amalgamate their undertaking with that of any other gas company supplying gas in the Metropolis on the south side of the Thames (except the Crystal Palace District Gas Company), subject to the conditions and restrictions contained in the City of London Gas Act, 1868, except the restriction as to time contained in s. 18 of that Act. This disability was removed by the Crystal Palace District Gas Act, 1893 (56 & 57 Vict. c. clxviii.), s. 30. See *post*, p. 274. Under the powers of the City of London Gas Act, 1868, and the South Metropolitan Gas Act, 1876, there have been amalgamated with the South Metropolitan Company the following companies: the Surrey Consumers Gas Co. (1879); the Phœnix Gaslight and Coke Co. (1880); the Woolwich, Plumstead, and Charlton Consumers Gas Co. (1884); and the Woolwich Equitable Gas Co. (1884). These amalgamations were effected by schemes confirmed in accordance with the City of London Gas Act, 1868. By virtue of these schemes the several companies were amalgamated into one company, called the South Metropolitan Gas Company; the original name of the company having been the South Metropolitan Gaslight and Coke Company. See the preamble to the South Metropolitan Gas Act, 1896.

Metropolis Gas (Prepayment Meter) Act, 1900.

By the Metropolis Gas (Prepayment Meter) Act, 1900, provision is made to regulate the charges in connection with the use of prepayment meters. See *ante*, p. 43, and the Act, *post*, p. 293.

South Suburban Gas Act, 1904.

By the South Suburban Gas Act, 1904 (4 Edw. 7, c. xci.), the name of the Crystal Palace District Gas Company was changed to the South Suburban Gas Company, and by s. 2 thereof (repealing s. 17 of the Crystal Palace District Gas Act, 1893), it was provided that the standard price should be 3*s.* 2*d.*, with power to increase or reduce the price above or below such standard price, subject to a reduction or increase in the standard dividend on ordinary stock as therein specified. Provision was made that this dividend should be dependent upon the price of gas in any *half-year* instead of in any *year*, as provided by s. 17 of the Act of 1893.

South Suburban Gas Act, 1905.

By the South Suburban Gas Act, 1905 (5 Edw. 7, c. xviii.), it was provided that the company should not be liable to any forfeiture by reason of the presence in the gas supplied by them of sulphur impurities other than sulphuretted hydrogen.

South Suburban Gas Act, 1906.

By the South Suburban Gas Act, 1906 (6 Edw. 7, c. lxvii.), it was provided (by s. 2) that the standard price to be charged by that company should be 2*s.* 9*d.*, provided that the company might increase or reduce the price charged above or below the standard price, subject to a reduction or increase in the dividend payable by the company on their ordinary stock as therein specified. It was further enacted (by s. 3) that the prescribed number of candles should be fourteen, provided that if the illuminating power shall be below such prescribed number to an extent not exceeding half a candle the company shall not be liable to any penalty, and that if such deficiency exceeds half a candle, but does not exceed one candle, the penalty shall not exceed £5. By the same section it is further enacted that the burner to be used shall be the Metropolitan Argand Burner (No. 2) or such other burner as may be for the time being approved by the Board of Trade, provided that such other burner shall be of such a pattern (not being an incandescent or similar burner) as shall be practicable for use by the consumer, and shall, with the chimney (if any) to be used therewith, be the most suitable for obtaining from the gas, when consumed at the rate of five cubic feet an hour, the greatest amount of light; provided also that the said Metropolitan Argand Burner (No. 2) or such other burner as aforesaid, shall in making the test be so used as to obtain from the gas when consumed at the rate aforesaid the greatest amount of light. It is also enacted by the same section that the standard for measuring the illuminating power shall be Harcourt's Standard Pentane Ten-candle Lamp, which shall be used with an open-bar photometer, and that the gas under examination shall be kept burning at the said rate of five cubic feet an hour for at least thirty minutes before any testing is made.

Sect. 5 of the same Act makes provision as to testing for calorific power, sulphur impurities, and illuminating power with flat-flame burners similar to that in s. 5 of the London Gas Act, 1905, *supra*. Provision was also made for testing illuminating power with incandescent burners.

PART II.—WATER.

WATER companies, when they have no statutory authority for that purpose, are liable to indictment and to proceedings for injunction for breaking up the public streets. How far such proceedings will succeed where the company are careful to cause no unnecessary or permanent obstruction, is illustrated by reference to the cases collected, *post*, pp. 164 *et seq.*

Effect of Parliamentary powers.

Water companies, on obtaining parliamentary authority, acquire compulsory powers, if necessary (except where they proceed by Provisional Order), to take land and water rights; power to break up the streets, under superintendence, for the laying and renewing of their pipes; power to charge rates not exceeding the authorised maximum, based on the rateable value of property, and power to require payment of the same quarterly in advance; and power to recover such rates by the summary method of distraint with a further power of cutting off the supply; and the company's water supply is protected by penalties against the fouling, waste or misuse of it. On the other hand, the company may be compelled, under the conditions provided, to afford a supply of pure and wholesome water, unless prevented by frost, unusual drought or other unavoidable cause or accident; and their profits are restricted to 10 per cent. on their ordinary capital. In many cases the supply is required to be constant.

Dividend on new capital.

When a company comes to Parliament for power to raise additional capital the dividend on the new capital is generally fixed at 7 per cent. for the ordinary stock, and 5 per cent. for the preference.

Auction clause.

Since the year 1887, the Standing Order 188, quoted at p. 7, has been made applicable to water companies so far as regards the auction clause, and therefore the Bill or Provisional Order must contain an enactment requiring the additional capital to be offered by public auction or tender.

Powers of local authorities.

By s. 51 of the Public Health Act, 1875, any urban authority may provide their district or any part thereof, and any rural authority may provide their district or any contributory place therein, or any part of any such contributory place, with a supply of water proper and sufficient for public and private purposes. For those purposes or any of them both urban and rural authorities are authorised (1) to construct and maintain waterworks, dig wells, and do any other necessary acts; (2) to take on lease or hire any waterworks and (with the sanction of the Local Government Board) purchase any waterworks or any water or right to take or convey water, either within or without their district, and any rights, powers and privileges of any water company; and (3) to contract with any person for a supply of water.

Restriction where a statutory company exists.

The following restriction is placed upon the powers of urban and rural authorities alike;—before commencing to construct waterworks within the limits of supply of any water company empowered by Act of Parliament, or any order confirmed by Parliament, to supply water, the local authority must give written notice to every water company within whose limits of supply the local authority are desirous of supplying water, stating the purposes for which and (as far as may be practicable) the extent to which water is required by the local authority. Sect. 52 then proceeds to enact that it shall not be lawful for the local authority to construct any waterworks within such limits if and so long as any such company are able and willing to supply water proper and sufficient for all reasonable purposes for which it is required by the local authority. Any difference as to whether the water which any such company are able and willing to lay on is proper and sufficient for the purposes for which it is required or whether the purposes for which it is required are reasonable, or (if and so far as the charges of the company are not regulated by Parliament) as to the terms of supply, must be settled by arbitration in manner provided by the Public Health Act, 1875.

Operation of s. 52 of Public Health Act, 1875.

Sect. 52 of the Act of 1875 has been put in operation in many cases, and arbitrations held. Those of which a report exists are referred to *post*, pp. 852 *et seq.*

Provision in cases where company fails to supply.

Of recent years it has become usual to introduce into Bills or Provisional Orders, obtained for the first time by companies or individuals, a clause to the effect that if at any time after the expiration of a certain limited time (*e.g.*, three or five years) from the commencement of the Act or Order, the undertakers are not furnishing or prepared on demand to furnish a sufficient supply of water in accordance with the provisions of the Act or Order in any part of the district, the local authority may provide such supply under the Public Health Act, 1875.

Local authority must supply pure and wholesome water.

A local authority supplying water under the powers of the Public Health Act, 1875, must provide and keep in their waterworks a supply of pure and wholesome water. Constancy of supply and pressure are left optional (s. 55, *post*, p. 860).

Power to charge a water rate.

May be compelled to charge water rate.

By s. 56 of the Act of 1875, where a local authority supplies water to any premises, they may charge in respect of such supply a water rate to be assessed on the net annual value of the premises, ascertained in the manner by that Act prescribed with respect to general district rates. By the Public Health (Water) Act, 1878, s. 10, a small number of ratepayers may compel them to charge such water rate. See, *post*, p. 924.

Where a local authority supply water within their district, they have the same powers and are subject to the same restrictions for carrying water mains within or without their district as they have and are subject to for carrying sewers within or without their district. This subject is fully explained *post*, p. 856. As to their powers with regard to the construction of reservoirs, see *post*, p. 855.

Local authorities laying mains outside their district.

Any water company may contract to supply water or may lease their waterworks to any local authority, and power is also given them to sell their waterworks to the local authority. See *post*, p. 870.

Water company may lease or sell waterworks to local authority.

As to the formation of united districts for the purposes of water supply, see *post*, p. 896.

United districts.

Local authorities are empowered to compel occupied houses to be supplied with water. The conditions under which this can be effected are dealt with *post*, p. 867.

Local authorities may compel houses to be supplied.

By the Public Health (Water) Act, 1878, the power of compelling houses to be supplied is, as regards rural districts, considerably enlarged, s. 3 enacting that "it shall be the duty of every rural sanitary authority, regard being had to the provisions in this Act contained, to see that every occupied dwelling-house within their district has within a reasonable distance an available supply of wholesome water sufficient for the consumption and use for domestic purposes of the inmates of the house." The Act of 1878 further provides that it shall not be lawful in any rural district to erect or to re-build houses unless there is provided within a reasonable distance an available supply of wholesome water; and power is given to rural authorities to provide stand-pipes and to recover water rates or water rents from the owner or occupier of every dwelling-house within 200 feet of any such stand-pipe in the same manner, in all respects, as if the supply had been given on the premises. The Local Government Board are authorised to invest any urban authority with the powers of rural authorities under the Act of 1878. See *post*, p. 924. As to the further powers given to parish councils and district councils with reference to water supply, see *post*, p. 926.

Special powers of rural authorities.

Urban authorities may be invested with special powers of the Act of 1878.

When local authorities require to put in force the compulsory powers of the Lands Clauses Act, 1845, for any purpose connected with water supply, their course is to obtain a Provisional Order under s. 176 of the Public Health Act, 1875. The power of making such an order rests with the Local Government Board. Before proceeding, the advisers of local authorities should carefully peruse the instructions on this subject issued by the Local Government Board. See these instructions, *post*, p. 932. It

Procedure where local authority require to take lands compulsorily for water purposes.

Water rights.

was at one time considered that the Board had power to make an order for the compulsory taking of water rights, such as the taking of the whole or part of the water from a river, stream, or lake. It is now conclusively settled that they have no such power. At p. 883 the reason is fully explained. When it is necessary to acquire water rights compulsorily a local authority must proceed by private Bill.

Borough Funds Acts.

The conditions under which local authorities may expend the funds or rates under their control in promoting or opposing Bills in Parliament are considered in connection with the Borough Funds Acts, 1872 and 1903, *post*, pp. 1032, 1039.

Costs of proceeding by Bill when Provisional Order obtainable.

By s. 10 of the Borough Funds Act, 1872, it is provided that the provisions of that Act shall not extend to applications for any Bill in Parliament for any object which would, for the time being, be attainable by Provisional Order. As to when the Borough Funds Acts must be complied with and as to when they need not, see the note to s. 2, *post*, p. 1036.

Gas and Water Works Facilities Acts, 1870 and 1873.

Under the Gas and Water Works Facilities Acts, 1870 and 1873, Provisional Orders, subject to confirmation of Parliament, may be obtained by "any company, companies or person." So far as regards water, Provisional Orders may be obtained (a) to construct or to maintain and continue waterworks and works connected therewith, or to supply water in any district within which there is not an existing company, corporation, body of commissioners or person, empowered by Act of Parliament to construct such works and to supply water; (b) to raise additional capital necessary for any of those purposes; (c) to enable two or more companies or persons duly authorised to supply water in any district or in adjoining districts to enter into agreements jointly to furnish such supply, or to amalgamate their undertakings; (d) to authorise two or more companies or persons supplying water in any district or in adjoining districts to supply water and to enter into agreements jointly to furnish such supply and to amalgamate their undertakings.

Procedure not available to local authority as regards water.

Local authorities cannot obtain Provisional Orders under these Acts so far as regards water.

Lands cannot be taken compulsorily under Acts of 1870 and 1873.

A Provisional Order under the Gas and Water Works Facilities Acts, 1870 and 1873, cannot confer the power of taking land compulsorily. It is expressly provided by s. 7 of the Act of 1870 that a Provisional Order shall not contain any provision for empowering the undertakers or any other person to acquire lands otherwise than by agreement, and by s. 10 it is further provided that the provisions of the Land Clauses Acts (1) with respect to the purchase and taking of lands otherwise than by agreement, and (2) with respect to the entry upon lands by the promoters of the undertaking, shall be excepted from incorporation. Therefore, where companies or private persons desire to take land compulsorily, whether for the purposes of water supply or of gas supply, they must proceed by private Bill, and not by Provisional Order.

Power of Local Government Board to make Provisional Orders under Public Health Act, 1875.

By s. 303 of the Public Health Act, 1875, the Local Government Board are empowered to issue Provisional Orders to amend local Acts. Mr. John Lithiby, C.B., the legal adviser to the Board, in his evidence before the Committee on the Water Supplies (Protection) Bill (1910), stated the practice of the Board in relation to waterworks Provisional Orders during the past twenty-five years. His evidence is of great interest and value and is contained on pp. 10—12 of the Minutes of Evidence [Parliamentary Paper, No. 226, of Session 1910].

Notices when water is proposed to be taken from stream.

By Standing Order 14 of the House of Commons it is required that on or before December 15th immediately preceding the application for a Bill, whereby it is proposed to abstract water from any stream for the purpose of supplying any cut, canal, reservoir, aqueduct, navigation, or waterwork, notice in writing of such Bill shall be given to the owners or reputed owners, lessees, or reputed lessees, and occupiers of all mills and manufactories or other works using the waters of such stream for a distance of twenty miles below the point at which such water is intended to be abstracted, such distance to be measured along the course of such stream, unless such waters shall, within a less distance than twenty miles, fall into or unite with any navigable stream, and then only to the owners or reputed owners, lessees, or reputed lessees and occupiers of such mills and manufactories or other works as aforesaid which shall be situate between the point at which such water is proposed to be abstracted, and the point at which such water shall fall into or unite with such navigable stream. These notices must state certain particulars required by the Standing Order. And see Standing Order of the House of Lords, No. 14.

Maps to be deposited when Bills propose taking of water or extension of limits of supply.

By Standing Order 25c of the House of Lords it is also provided that where, under the powers of any Bill, any water may be taken, collected, or impounded for the purpose of a water supply, the Promoters shall, on or before November 30th, deposit at the office of the Local Government Board, and also at the Office of the Clerk of the Parliaments, an ordnance map on the scale of 6 inches to a mile, showing by a distinguishing mark the position of each reservoir, well, conduit, or other work proposed to be authorised by the Bill; and where the proposed source of supply is a river, stream, or lake, an ordnance map on the scale of not less than 1 inch to a mile, showing by a clearly marked line the catchment area or gathering ground from which the waters are derived. It is further provided that, where under the powers of any Bill it is proposed to supply with water any area not previously included within the Promoters' limits of supply, the Promoters shall similarly deposit an ordnance map on the scale of 1 inch to a mile, showing respectively the existing limits of supply and the area proposed to be added thereto.

Compensation water.

When Parliament authorises undertakers to take water from a watershed or collecting ground, it is the invariable practice to provide for compensation for injury likely to be caused by the abstraction of water which would otherwise find its way into the streams or rivers fed by the watershed. This compensation may be in water, or in money, or in both; and in rare instances the injury likely to occur to particular works on a stream may be so great that a clause may be inserted requiring the undertakers to purchase the mills or works of petitioners if they can "prove to the satisfaction of the arbitrator that the business or businesses or either of them cannot be satisfactorily carried on by reason of the construction or maintenance of the said works or execution of the said powers." The words quoted are taken from the Rochdale Corporation Water Act, 1898 (61 & 62 Vict. c. ccxxxvi.), s. 38 (2) (b).

Measure of water compensation.

The compensation given by Parliament is generally in water. One-third of the mean available rainfall of three consecutive dry years is the measure usually adopted. Provision is usually made for the regular, equal, and continuous supply of this compensation water to the rivers and streams during the twenty-four hours of each day. For this purpose it is usual to authorise the construction by the undertakers of one or more compensation reservoirs according to the necessities of the case.

Standing Orders as to compensation water.

By Standing Order 185 of the House of Commons it is provided that—

> "In the case of every Bill whereby it is proposed to impound or abstract the whole or any part of the water of any river or stream, the Committee on the Bill shall inquire into the expediency of making provision, so far as may be practicable, for giving a flow of water in compensation for the water so impounded or abstracted, and that the whole or a minimum amount of such compensation water shall be given in a continuous flow throughout the twenty-four hours of every day, and shall report to the House accordingly."

See a similar Standing Order of the House of Lords, No. 110a.

See the clause as to compensation water in the Model Water Bill, *post*, p. 703.

Exceptional cases.

In very exceptional circumstances Parliament has required the compensation water to be sent down some particular stream during the working hours of the mills instead of during the twenty-four hours of the day. As instances, see (1) the Oldham Corporation Act, 1886 (49 & 50 Vict. c. cxvii.), s. 15, which requires the compensation water in respect of the Hull Brook to be sent down during twelve hours of each working day (as defined by the section), except Saturday, and during seven hours on each Saturday, commencing in each case at five o'clock in the morning; (2) the Huddersfield Water Act, 1869 (32 & 33 Vict. c. cx.), s. 28, which requires certain compensation water to be sent down the Brow Grains Dyke during each lawful working day from 6 a.m. to 6 p.m.; the Huddersfield Corporation Waterworks Act, 1890 (53 & 54 Vict. c. cxv.), s. 26, which requires the compensation water in respect of the Wessenden Brook to be given during twelve hours (6 a.m. to 6 p.m.) each working day, except Saturday, and on each Saturday from 6 a.m to 12 noon; and the Huddersfield Water Act, 1908, amending certain of the provisions of the former Acts with regard to compensation water; and (3) the Halifax Improvement Act, 1853 (16 & 17 Vict. c. clxvii.), s. 22, the Halifax Corporation Waterworks and Improvement Act, 1863 (31 & 32 Vict. c. cxxvii.), s. 14; and the Halifax Water and Gas Extension Act, 1876 (39 & 40 Vict. c. ccxxxiv.), s. 18. See also Sheffield Corporation Water Act, 1896 (59 & 60 Vict. c. cxc.), ss. 22, 24 and 25, and two special agreements set out in the 4th Schedule to the Act, and Sheffield Corporation Act, 1907, ss. 29—35.

For other examples of special clauses with regard to compensation water, see the Leeds Corporation (Consolidation) Act, 1905, ss. 10—16, and Leeds Corporation Act, 1907, s. 15; Bolton Corporation Act, 1905, ss. 10—15; Arbroath Corporation Water Order Confirmation Act, 1905, s. 13; Forfar Corporation Water Order Confirmation Act, 1906, s. 10; Clydebank and District Water Board Order Confirmation Act, 1906, s. 32; Blairgowrie, Rattray and District Water Board Order Confirmation Act, 1906, s. 52; Tees Valley Water (Consolidation) Act, 1907, ss. 36—48; Renfrewshire Upper District (Eastwood and Mearns) Water Act, 1907, s. 37; Penrith U. D. C. Act, 1907, s. 9; Birkenhead Corporation Water Act, 1907, s. 58; Conway and Colwyn Bay Joint Water Supply Board Act, 1908, s. 4; Burnley Corporation Act, 1908, s. 10; Pontypridd Waterworks and Tramroads Act, 1908, ss. 7—9; Pontypool Gas and Water Act, 1909, s. 18;

Cardiff Corporation Act, 1909, s. 9; and Greenock Corporation Act, 1909, ss. 297, 298.

Rule for ascertaining amount of water compensation.

As above stated, the measure of water compensation is usually one-third of the mean available rainfall of three consecutive dry years. In most parts of the United Kingdom the amount of rainfall is now known, or approximately known, by the system of rain gauges, with which the name of the late Mr. George James Symons, F.R.S., is associated.

The first process in the calculation is to find the mean of three consecutive dry years. The three years must not only be dry years, but consecutive dry years. If the available statistics afford reliable figures for three such years, then the mean of those three consecutive years may be taken. If not, the mean available rainfall of three consecutive dry years is ascertained by deducting from the average annual rainfall one-sixth, or, according to some, one-fifth.

The next step is to deduct the proportion of the rainfall which fails to reach the streams and rivers owing to evaporation and to absorption by vegetation. This figure is variously put at fourteen and at fifteen inches. It is believed that fifteen inches is a fair figure, though it has been contended, that the figure ought to be more than fifteen where the watershed is flat, *e.g.*, a tableland, and where, so to speak, the water is "laid out to dry."

The third step is to divide the result by three, and that gives the one-third of the mean available rainfall of three consecutive dry years. Thus, if the average rainfall of three consecutive dry years be, say, *e.g.*, thirty-six inches, a deduction of fifteen is made for evaporation and absorption, which leaves the available rainfall at twenty-one inches, and therefore seven inches, being one-third of that, is the amount of water compensation to be given.

In the Derwent Valley Scheme authorised in 1899, Parliament made provision for two arbitrators and an umpire (called the "referees"), to put up gauges and ascertain the annual rainfall, over a period of the next succeeding six years, and to find the average rainfall, and to ascertain and declare the "available rainfall," and provision was then made that $\frac{1}{365}$th part of the available annual rainfall so ascertained should be sent down during the twenty-four hours of the day. See Derwent Valley Water Act, 1899 (62 & 63 Vict. c. cclxix.), s. 51.

Rule as to one-third not always followed.

The rule of ascertaining the fair amount of water compensation does not fit every case. In cases out of the ordinary category a less amount has been allowed. Thus, in the great schemes of Thirlmere for Manchester, and Elan and Claerwen Valleys for Birmingham, the compensation water required to be given was calculated upon one-fourth instead of the usual third of the mean available rainfall of three consecutive dry years; and in the case of the Vyrnwy scheme for Liverpool somewhat less than that proportion. As a general rule, where the district through which the streams compensated flow is agricultural, the compensation is one-fourth, and where it is manufacturing the compensation is one-third. In all the three great instances above mentioned, the amount in gallons of the compensation water was ascertained and fixed, and inserted in the several Acts; and that is the usual course.

Decisions with regard to compensation water.

By the Swansea Local Board of Health Water Works Act, 1860 (23 & 24 Vict. c. xlviii.), the Swansea Local Board were authorised to construct certain reservoirs and to impound certain waters. By s. 29 the local board were required to send certain specified quantities of compensation water daily down the Lliw River and the Blaenant Ddu Brook respectively. Section 30 provided that in case of any failure, neglect, or default certain penalties and damages should be recoverable. In 1884 another Act was passed empowering the corporation, in whom the powers of the local board had become vested, to construct certain additional reservoirs. Section 24 of this Act repealed the provisions of the former Act in regard to penalties, but enacted in lieu thereof—

> "In case of any failure, neglect or default by or in consequence of which the quantity of water which by the Act of 1860 and this Act is required to flow or be discharged from or out of the reservoirs on the River Lliw and Blaenant Ddu Brook respectively shall not so flow or be discharged, the corporation shall for and during every day on which such failure or neglect or default shall occur forfeit and pay by way of penalties to the owners and occupiers of lands, ornamental waters, fish ponds, mills and works interested in the waters of the said river and brook and of each of them, and who may sue for and recover the same, the sum of five pounds, together with the amount of damage or loss which shall accrue to or have been sustained by such owners and occupiers in any court of competent jurisdiction. Provided that the corporation shall not be liable to make good any such damage or loss in case of inevitable accident beyond the control of the corporation . . . ."

The provision as to the compensation water was the only compensation given to the riparian owners for taking the waters of the streams referred to. In 1885, in consequence of excessive droughts and of the reservoir leaking, the water in the reservoir became very low, and it became impossible for the corporation to supply both the riparian owners and the town of Swansea. They accordingly elected to supply the town by sending the water into the mains rather than to supply the riparian owners by sending it down the river Lliw and the Blaenant Ddu Brook. Three actions were thereupon commenced by owners and occupiers of mills and factories on the said river and brook. In the Court of Appeal the Master of the Rolls (Lord Esher), in giving judgment, said: "What meaning must be given to the words 'failure, neglect, or default'? When a deficiency in the flow of water resulted from no act on the part of the corporation, but was produced by some cause over which the corporation had no control, that would not, in my opinion, be a 'failure' within the meaning of the section. But if by doing any act, or by omitting to do any act which it was in their power to do, the corporation caused the flow of water to be diminished, then, in my opinion, there would be a 'failure' within the meaning of the section." And he held that, "considering the present condition of engineering skill, the leaks were something which it was possible for the corporation to put right, and their omission to do this amounted to a 'failure' within the meaning of the section, and rendered them liable to a penalty." The next question that arose was whether the corporation were liable to one penalty only, or to a penalty in each of the actions. Denman and Wills, JJ., who respectively had tried the actions on circuit, held that the defendants were liable to a penalty of £5 per day for each day to each of the owners of lands in respect of which he or they was or were separately interested in the compensation water. The Court of Appeal, however, took a different view in regard to this. The Master of the Rolls said as follows: "But then arose a second question, namely, who were entitled to recover these penalties? To say that every owner and occupier of riparian land along the whole course of the stream was entitled to recover separate penalties from the corporation for every infraction would be to produce an outrageous result from the Act. The words were, however, susceptible of another meaning which would produce a reasonable and not uncommon mode of enforcing such obligations. The true interpretation was that every riparian owner who was interested in the water had the right to bring an action for penalties in such a case, but only one penalty could be recovered, and when once the penalty had been recovered, all the other actions for penalties must fail. Of course, as I have said, they would each recover for any damages which they had sustained, but only one penalty could be recovered in respect of each day" (*Lewis* v. *Swansea Corp.* (1888), 4 T. L. R. 122, 706).

A point of a somewhat similar kind arose in the *Huddersfield Case* of 1902. The Huddersfield Water Act, 1869 (32 & 33 Vict. c. cx.), authorised the corporation to construct waterworks and to appropriate and use waters which would otherwise "directly or derivatively flow or proceed into" certain streams. As compensation for the taking of such waters s. 28 required that—

> "The corporation shall cause to flow from the reservoir to be constructed at or near Blackmoor Foot, down a pipe or aqueduct, into the said Brow Grains Dyke at a point . . . . 951 gallons per minute during the following hours of every lawful working day, that is to say, from 6 o'clock in the forenoon to 6 o'clock in the afternoon."

Sect. 31 required the corporation to construct and maintain measuring gauges. Sect. 32 provided that—

> "In case of neglect on the part of the corporation to maintain any such gauge in a state of efficiency and in case of any other neglect by or in consequence of which any of the several quantities of water aforesaid from the said reservoirs shall not so flow, the corporation shall for every day on which such neglect occurs forfeit and pay to the occupiers of each of the mills and works affected thereby (who may sue for and recover the same) the sum of £5, and shall in addition make compensation for any loss, damage, or injury sustained by such occupiers, or any of them, in respect of which such penalties are an insufficient compensation, and such occupiers may respectively from time to time recover such compensation with costs from the corporation by proceedings in any court of competent jurisdiction."

Actions were brought against the corporation by eight different occupiers of mills and works along the stream, alleging that through the neglect of the corporation on all and each of the working days comprised within the period extending from September 23rd, 1901, to November 11th, 1902, inclusive, the quantity of water aforesaid did not so flow as required by the said Act from the said reservoir at Blackmoor Foot into the said Brow Grains Dyke, whereby damage was sustained. Each of the plaintiffs claimed £215, being at the rate of £5 per day for each of the days on which the shortage occurred. The corporation pleaded that this was not due to "neglect" on their part, and that if liable, they were only liable to one penalty of £5 for each day. The actions were consolidated and were tried together. The plaintiffs gave evidence that pipes of the character used after the lapse of time were liable to be obstructed by corrosion or deposit. On behalf of the corporation no evidence was given to account for the deficiency in the amount of the compensation water, and the manager of the waterworks admitted that for something like thirty years no inspection had been made, and that he had no knowledge whether the pipes were obstructed or not. The evidence showed that when the head of water was kept above eleven feet the pipes did furnish a sufficient supply of compensation water, but that when the head was reduced to seven feet during a period of drought the water ceased to flow, and the suggestion of the plaintiffs was that the water ceased to flow by reason that the head of seven feet did not give the necessary driving power. It also appeared that when the drought was over ample water was obtained in the reservoir, and the pipes again afforded the requisite compensation water. The jury found for the plaintiffs, and the Court of Appeal held that there was evidence in support of the verdict; and distinguishing the above case of *Lewis* v. *Swansea Corp.*, the Court held, as did GRANTHAM, J., at the trial, that the liability of the corporation was not limited to one penalty of £5 for each day, but that they were liable to each of the plaintiffs in that amount for each day during which the deficiency continued. On this point COLLINS, M.R., observed: "It seems to me that s. 32 has in it all those specific words which make it impossible as a matter of grammar or sense to say that it is open to the construction which was put on a section—I will not say analogous but in *pari materiâ*—in *Lewis* v. *Swansea Corp.* (1887), 4 T. L. R. 122, 706. It has in it specific conditions for giving to each individual, in the most distinct terms, the right to what is in a sense a penalty, but is really liquidated damages which are not provided for apart from ordinary damages as in the *Swansea Case*, but which are to be taken as part of the damages without prejudice to damages in addition. In the *Swansea Case* there was in the clearest possible terms a penalty. There was no provision for its being paid to each of the millowners, and there was a distinct provision that that penalty was to be entirely exclusive of damages. It was distinctly taken out of the category of compensation. It was a penalty and nothing more. The two sections really, when they are criticised, are not in the least degree analogous, and the grammatical meaning of this section does not admit of any possible doubt. Therefore, it seems to me that the construction which has been accepted by the learned judge is right, and that the plaintiffs are entitled to the full amount that they have claimed." Judgments to the same effect were delivered by ROMER and MATHEW, L.JJ. (*Beaumount and Others* v. *Huddersfield Corp.* (1902), 67 J. P. 57 (*a*)).

(*a*) See now the Huddersfield Corporation Act, 1902 (2 Edw. 7, c. cxxxvii.), s. 57, which contains the following proviso: "Provided that no person including the corporation shall incur or be liable for more than one penalty (other than a daily penalty), under the recited Acts or this Act for the commission of the same offence or for the same neglect or default." See definition of "recited Acts" in s. 4.

Two trading companies having commenced actions in the High Court against the Corporation of Huddersfield to recover penalties under s. 32 of the Huddersfield Act above quoted, the two actions were consolidated and the preliminary point of law argued as to whether the actions were maintainable, inasmuch as it was argued that the proper remedy of the plaintiffs was under ss. 140 and 145 of the Railway Clauses Act, 1845, which provided that every penalty or forfeiture the recovery of which was not otherwise provided for might be recovered by summary proceedings before two justices. WRIGHT, J., held that by s. 32 it was otherwise provided by the words "who may sue for and recover the same" (*Meltham Spinning Co.* v. *Huddersfield Corp., Bent Ley Silk Mills, Ltd.* v. *Same* (1903), 89 L. T. 403).

Damage caused by bursting of reservoirs. etc.

In many Acts authorising the construction of reservoirs a special clause is introduced for the protection of millowners and landowners, making the undertakers responsible for any damage caused by the bursting of the reservoirs or aqueducts. The following section is taken from the Manchester Corporation Waterworks Act, 1879 (42 Vict. c. xxxvi.):

> "The Corporation shall at all times make good all such loss or damage whatsoever as may be occasioned by reason of the bursting, leaking, or overflow of the dam of Lake Thirlmere, or of any of the reservoirs, aqueducts, pipes, or other works constructed or maintained for the purposes of this Act within the Lake District as hereinbefore defined."

The following section is taken from the Birmingham Corporation Water Act, 1892 (55 & 56 Vict. c. clxxiii.):

> "46. The Corporation shall from time to time make full compensation to all persons for all damage and injury, losses, and expenses whatsoever which may from time to time be incurred or suffered by reason or in consequence of the bursting or giving way of any of the reservoirs or the aqueduct by this Act authorised, and such compensation shall be paid and satisfied out of any rates, revenues, or funds for the time being belonging to the Corporation."

No bursting clause occurs in the Liverpool Corporation Waterworks Act, 1880 (43 & 44 Vict. c. cxliii.), authorising the Vyrnwy scheme.

The following section occurs in the Newcastle and Gateshead Waterworks Act, 1894 (57 & 58 Vict. c. lxxi.), s. 10:

> "The company shall make full compensation to all persons for all damage and injury, losses, and expenses whatsoever which they may from time to time sustain by reason or in consequence of the bursting or giving way of the reservoir by this Act authorised."

By the Sheffield Waterworks Act, 1853 (16 Vict. c. xxii.), the Sheffield Waterworks Company were authorised to obtain a further supply of water from the rivers Rivelin and Loxley and their tributaries. By s. 68 it was provided:

> "That the said company shall and they are hereby required from time to time and at all times for ever hereafter to pay and make good to the owners, lessees, and occupiers of all mills, manufactories, buildings, lands, and grounds, and to every person whomsoever, all loss, costs, charges, sum and sums of money, damages and expenses whatsoever, and for all injury of what nature or kind soever, as well immediate as consequential, which such owners, lessees, or occupiers, or other persons may suffer, incur, pay, expend, or be put unto by reason or in consequence of the failure or giving way of the reservoirs, embankments, watercourses, or other works of the said company."

By the Sheffield Waterworks Act, 1864 (27 & 28 Vict. c. cccxxiv.), it was recited that in March, 1864, the embankment of a reservoir, situate on the upper waters of the river Loxley, which was being constructed by the company, gave way, and an inundation ensued in the valleys of the rivers Loxley and Dun, extending into and below the town of Sheffield. After reciting s. 68 of the Act of 1853, and also that "it is apprehended that claims to a very considerable amount will be made against the company for damages in consequence of the said inundation in respect of injury immediate or consequential to property or to trade or business or in respect of bodily injury or in respect of loss of life," the Act authorised the appointment of a body of commissioners styled "The Sheffield Inundation Commissioners," for the purpose of assessing the amount of damages payable to the several claimants, and authorised the company to raise a further sum of £400,000. By the Sheffield Corporation Water Act, 1896 (59 & 60 Vict. c. cxc.), the Sheffield Corporation, who had in 1887 acquired the undertaking of the water company, obtained an Act for impounding the waters of the river Porter or Little Don and its tributaries. This Act does not contain a general bursting clause, but in an agreement between the Corporation and Messrs. Samuel Fox and Co., Ltd., which is scheduled to and confirmed by the Act, the following provision occurs:

> "6. The Corporation are from time to time and for ever hereafter to pay and make good to the company and their lessees, tenants, clerks, agents, servants, workmen, and other persons employed by the company, all costs, charges, sums of money, damages, and expenses whatsoever, and for all injury of what nature or kind soever as well immediate as consequential, which the company or such persons as aforesaid may suffer, incur, pay, expend, or be put unto by reason or in consequence of the failure or giving way of the reservoirs, embankments, watercourses, mains, pipes, or other works of the corporation."

A similar provision for the protection of Messrs. Fox occurs in an agreement scheduled to the Sheffield Corporation Act, 1907, and in s. 33 of the Barnsley Corporation Waterworks Act, 1896 (59 & 60 Vict. c. lii.).

The Mountain Ash Local Board Act, 1886 (49 & 50 Vict. c. cxiv.), contains a clause (s. 23) for the protection of the owners, etc., of the Darwonno Estate. The following sub-section occurs in that clause:

> "(c.) The Local Board shall maintain and keep the reservoir to be constructed by them water-tight in all respects, and shall from time to time make good any damage which the owners, lessees, or occupiers of the Darwonno Estate or of any part thereof, or of the mines and minerals thereunder, or any of them may sustain during the construction or maintenance of the waterworks, by reason or in consequence of the bursting, leaking, overflow, or any failure of such reservoir, and nothing in this Act contained shall relieve the Local Board from liability to compensate and pay such owners, lessees, and occupiers for any damage, loss, or injury done or occasioned to any mines or minerals by reason or in consequence of the construction of the said reservoir or of the breakage or leakage of all or any of the reservoirs, aqueducts, mains, or pipes whatsoever of the Local Board or the flow of water therefrom, or the cost of pumping or extra pumping occasioned thereby."

The section as to bursting in the Bury Corporation Waterworks Act, 1889 (52 & 53 Vict. c. clxxxii.), is remarkable on account of the proviso at the end thereof. The section is as follows:

> "7. The Corporation shall and they are hereby required from time to time and at all times hereafter to pay and make good to the owners, lessees, and occupiers of all mills, manufactories, dwelling and other houses, cottages, and other buildings now erected or in course of erection over upon the banks of or near the said Whitewell Brook, or which may hereafter be erected in proper and reasonable situations down to its juncture with the river Irwell, and of all lands adjoining or near to the said brook, all loss, costs, charges, sum and sums of money, damages and expenses whatsoever, and for all injury of what nature and kind soever which such owners, lessees, or occupiers may suffer, incur, pay, expend, or be put unto by reason or in consequence of the failure or giving way of the said reservoir, embankments, watercourses, or other works of the Corporation. Provided that this section shall not prejudice or impair the rights or remedies of the owners, lessees, and occupiers of property below the said junction by reason or in consequence of the matters aforesaid. Provided that no obligation or liability shall attach to the Corporation in respect of an injury occasioned by an *actus Dei*, and not arising from any default of the Corporation or any defect in the works."

The following section is contained in the Arbroath Corporation Water Order Confirmation Act, 1905 (s. 31):

> "The Corporation shall make full compensation to all persons (including the County Council of the county of Forfar and the district

> committees thereof) for all damage and injury, losses, and expenses whatsoever which they may from time to time sustain by reason or in consequence of the bursting or giving way of the reservoir or of the conduits or lines of pipes by this Order authorised, and of the flooding that may be thereby occasioned."

A similar provision is contained in the Dundee Water Order Confirmation Act, 1905, s. 17.

See also Stockport Corporation Act, 1905, s. 14; Lincoln Corporation (Water, etc.) Act, 1908, s. 39; Pontypridd Waterworks and Tramroads Act, 1908.

Adaptability of land for works an element in value of land to be acquired.

In estimating the value of land and easements to be acquired by a corporation or company for the construction of a reservoir, the natural and peculiar adaptability for the construction of a reservoir, of the lands in question, is a fit and proper matter for consideration as an element in the value thereof, in the assessment of compensation. *Ossalinsky* (*Countess*) v. *Corporation of Manchester*, reported Brown and Allen's Law of Compensation, 1896, at p. 718; *Cor.* GROVE and STEPHEN, J.J. The same point was raised and decided by the C. A. in the case of *In re an Arbitration between Gough and Aspatria Silloth and District Joint Water Board*, [1904] 1 K. B. 417.

Underground water.

The legal decisions which have established that there is no property in underground percolating water are examined at pp. 417 *et seq.* The practice of the Court of Referees in Parliament had been to follow the law and refuse a *locus standi* to petitioners alleging injury by the abstraction of underground percolating water. Mr. James Mansergh, President of the Institution of Civil Engineers, referred to the hardship of this in his presidential address on November 6th, 1900. Since then the following new Standing Order of the House of Commons has been issued:

> "134D. Where any owner, lessee, or occupier, or where any conservancy or other authority charged with the control of river or other waters, petitions against a Bill alleging that under its provisions any water or water supply of which they may legally avail themselves will be diminished or injuriously affected, it shall be competent to the referees on private Bills, if they think fit, to admit the Petitioners to be heard against the Bill or any part thereof."

The following are instances of Acts authorising pumping schemes in which clauses have been inserted for the protection of existing wells: Goole Urban District Council Act, 1899, s. 21; South Hants Water Act, 1899, s. 6; Bedford Corporation Water Act, 1902, s. 14; Gosport Water Act, 1904, s. 8; Selby Urban District Council Act, 1904, s. 27 (protection of wells within 2½ miles from pumping station); Southport, Birkdale and West

Lancashire Water Board Act, 1905, s. 20; Mansfield Corporation Act, 1905, s. 17; Malvern Water Act, 1905, ss. 24—26; Poole Corporation Water Act, 1905, s. 24 ("Provided that it shall not be obligatory on the owner to show that such depletion or diminution has been caused by the exercise by the corporation of the powers conferred on them by this Act, but on the other hand it shall be competent for the corporation to show that any such depletion or diminution has not been caused by the exercise of such powers"); Accrington District Gas and Water Board, 1906, s. 14 (the onus of proof resting upon the Water Board); Birkenhead Corporation Act, 1907, s. 43; Holderness Water Act, 1908, s. 55 (protection of wells within radius of 1 mile northward, and 2 miles southward of pumping station); South Staffordshire Waterworks Act, 1909, ss. 21, 23, 26, 28, 29, 32, 33 (a "protected area" is set up and the onus of proof is put upon the company); Frimley and Farnborough District Water Act, 1909, s. 27 (private wells within 2 miles from pumping station); Donington Water Act, 1909, s. 47, and Bungay Water Act, 1909, s. 35; Cambridge University and Town Waterworks Act, 1910, ss. 20—23. See also Staffordshire and Worcestershire Canal Companies Act, 1903, s. 8, with regard to the pumping operations of the Wolverhampton Corporation.

The South Lincolnshire Water Act, 1906, s. 38 (3), provides that in the event of the existing water supply of any person having his own well within the urban district of Bourne being so affected by the pumping operations of the company that he is deprived of his supply of water, the company shall, free of charge, lay the necessary pipes to connect the house of such person with the company's water mains, and shall on demand provide him with a supply of water at sufficient pressure, and the charge for such supply shall be one half the charge at which water is supplied to other water consumers in the said district occupying premises of the same rateable value.

An important precedent was created by the Sutton District Water Act, 1906, in regard to the protection of the sources of supply of a statutory water company. The water supplied by the company is obtained from wells sunk in the chalk at Sutton in Surrey. It came to the knowledge of the company that the London, Brighton and South Coast Railway Company proposed to bore for water in the chalk on land of their own adjoining the railway, and within 1,000 yards from the company's wells, and that it was the intention of the railway company to obtain a large quantity of water and to convey it along their line for the general use of their undertaking, including the supply to their

Victoria terminus and their carriage cleaning yard at Streatham. A "late Bill" was introduced by the water company, which was supported by all the public authorities having jurisdiction within or adjacent to the company's area of supply. Notwithstanding the opposition of the railway company, the Bill was allowed to proceed and ultimately became law. The operative section of the Act is as follows :

> "From and after the passing of this Act, it shall not be lawful for any company, body or person, except with the express authority of Parliament hereafter obtained, to convey by pipe or conduit for sale or use beyond the area of supply, water taken from any well or watercourse within such area.
>
> Provided that nothing in this section contained shall take away :
>
> (1) Any right of any landowner (other than a railway company) to supply with water any part of his estate situate within or partly within and partly without the area of supply, or to construct works for that purpose ; or
>
> (2) Any right of any railway company to supply with water any station or stations within the area of supply, or to construct works for that purpose or to use on any engine or carriage without as well as within such area, water supplied at any such station or stations."

See also River Wandle Protection Act, 1908, by which the Croydon Corporation were placed under certain restrictions in regard to the abstraction of water which might affect the flow of the river Wandle.

Water (Underground Supplies) Bill, 1902.

In the Session of 1902 a Bill entitled the Water (Underground Supplies) Bill was introduced by Mr. Abel Smith, M.P. It proposed to enact that no new well for public supply should be sunk without express parliamentary sanction, and that, when sanctioned, records should be kept of the effect of pumping on the level of the water. The Bill was not proceeded with.

Water Supplies (Protection) Bill, 1910.

In the Session of 1910 a Bill entitled the Water Supplies (Protection) Bill was introduced in the House of Lords by Lord Desborough, and was referred to a Joint Committee of both Houses of Parliament.

The Bill proposed to restrict the powers of authorised water undertakers in the following ways : (i.) By preventing the acquisition of fresh supplies without parliamentary authority ; (ii.) by rendering the undertakers liable to give compensation for injury to private supplies caused by their works ; and (iii.) where water is taken from one district to supply another, by conferring on the local authorities of the districts from and through which the water is taken the right to demand a supply from the works of the undertakers on terms to be agreed or fixed by the Local

Government Board. The report of the Committee was to the following effect:

Report of Joint Committee.

On point (i.) the Committee were in favour of the principle that Parliament, before sanctioning a scheme for abstraction of underground water, should be in possession of full information as to the objects of the scheme and the means for carrying it into effect. But they considered that in the present imperfect state of information on the subject of underground water, parliamentary control over such schemes can be better secured by the insertion of any necessary safeguard in each Bill which comes before Parliament than by making the clause of the Bill which was based on clause 8 of the Model Bill part of the general law, and that, at all events, for the present, each case should be dealt with on its merits.

As regards point (ii.) the committee pointed out that it is clear that to give a right to compensation for loss of subsoil water, even within the limitations proposed by the Bill, involves an important alteration of the general law, which, as it stands, recognises no property in underground water unless it is flowing in a known and definite channel, and that it had been forcibly urged on them that if it be fair and equitable to levy compensation, as the Bill proposed, from water undertakers for injury done by the abstraction of water from the subsoil of private property, then the application of the same rule or treatment to all other agencies or industries causing similar injury cannot be resisted.

With regard to the proposal in the Bill that, where claims for compensation are made, the ordinary law as to burden of proof should be altered, and within the area specified in the Bill the burden transferred from the claimant to the undertakers, the Committee considered that while the shifting of the burden of proof may be justified in reference to a designated person or specified source of water supply or narrowly limited area of land, it could not, as a general proposition, be supported even within the limits laid down in the Bill, and further that no general definition or limitation of a "Protected Area" can, with any pretence to accuracy, be made.

With regard to point (iii.), the Committee were of opinion that a claim for water supply made by the local authorities of the area which would naturally have recourse to the source of supply proposed to be appropriated, may, as a general rule, be reasonably complied with, but they abstained from making any such recommendation in favour of other districts through which the mains may pass.

The Committee were also of opinion that local authorities under the Public Health Acts should be relieved from the necessity of promoting a Bill in Parliament in connection with water supply in all cases where the procedure by Provisional Order is applicable. In these cases powers are not granted without a public local inquiry at which all parties interested are entitled to be heard. Opportunity for securing adequate protection would be thereby afforded to the various interests concerned, without imposing on the local authority and the ratepayers the expense of coming to Parliament by Bill which would in many cases be prohibitive and might involve serious delay.

In this connection the Committee drew attention to the inadequate powers at present possessed by local authorities for the compulsory acquisition of *water rights.* Under the existing law they possess the powers of compulsorily acquiring rights in land, of course on fair terms, but unless they can obtain rights in water by agreement (which involves the condition insuperable in some cases of obtaining the consent of every riparian owner) they are compelled to incur the expense of promoting a Bill in Parliament (which rural councils cannot do under the existing law) or to abandon their project. The procedure by Provisional Order enables all parties to have their claims adjudicated upon before the Order is made, and reviewed in Parliament before the Order becomes an Act and operative. In these circumstances the Committee, having special regard to the obligations placed on local authorities to provide an adequate supply of potable water, suggested that, subject to due provision for compensation water being made, these authorities should not be in a worse position respecting the acquisition of water rights than they are respecting the acquisition of rights in land.

On the general question the Committee drew attention to the Reports of various Royal Commissions and in particular to the following paragraph from the Fifth Report of the Royal Commission on Sewage Disposal (paragraph 356): "That ultimate control should be vested in an adequately-equipped central administrative authority, and that, as far as practicable, the local rivers board should, in accordance with regulations framed by the Central Department, act as a first tribunal. Among the more important questions which have to be dealt with under the new conditions of administration which we are contemplating are the following: " . . . . (iii.) The protection of water supplies from pollution; (iv.) the collection of information as to the water supplies available in various parts of the country; (v.) the collection of information as to the need of water in various parts of the country."

The Committee concluded by strongly recommending, *firstly*, the establishment (within the Local Government Board or independently as may seem best to the Government) of such a Central Administrative Authority as is contemplated in paragraph 356 of the Fifth Report of the Royal Commission on Sewage Disposal (quoted above); and, *secondly*, the division of the country into watershed areas, and the appointment for those areas of local representative boards, who, subject to the guidance and control of the Central Authority, should prosecute systematic and continuous inquiries into the water supply of their jurisdiction, take all necessary measures to husband such supplies, both surface and subsoil; secure their preservation from pollution; and advise on their allocation for sanitary, industrial, and other purposes.

See Parliamentary Paper, No. 226, of Session 1910.

Prevention of pollution of the watershed.

The most effective means of completely preventing the pollution of the watershed is to acquire it as part of the undertaking. And the practice of recent years has been in that direction. See the notes, *post*, p. 501.

In a few instances power has been given to the local authority supplying water, with the consent of the County Council or Local Government Board and of the District Council affected, to enforce the provisions of the Rivers Pollution Prevention Acts, 1876 and 1893, or of the Public Health Acts, in respect of waters over which the authority has powers of user or of any watercourse through which any water may for the time being flow into any such waters. See, *e.g.*, Colne Corporation Act, 1905, s. 7; Penrith Urban District Council Act, 1907, s. 15; Burnley Corporation Act, 1908, s. 17; and Llanelly Waterworks Act, 1909, s. 23.

Local Government Board inquiry into lead poisoning by moorland waters.

The results of a lengthy inquiry conducted by the Medical Department of the Local Government Board into the subject of lead poisoning by moorland waters are embodied in Reports issued as Supplements to the Annual Reports of the Local Government Board for the years 1900-1 and 1902 (see Parliamentary Papers, Cd. 1343 and Cd. 1714)

The following paragraphs from the summary and conclusions as set out on pp. 9—12 of the Second Report may be here quoted:

> "1. The history of epidemics of lead poisoning due to water supply at all events in the North of England, clearly shows that the towns which have suffered in the past derived their water supply from moorland sources. In some cases the water was known to be acid, and in others there was every reason to infer that the water was in a similar condition, since the physical circumstances of the gathering ground were the same."
>
> "2. Moorland gathering grounds are usually rich in peat. The amount of peat varies greatly on different gathering grounds, both superficially and in depth."
>
> "3. Moist peat has been found to be invariably acid in reaction."
>
> "5. Acid peaty water dissolves lead."
>
> "6. The degree of plumbo-solvency of a water is chiefly governed by the amount of its acidity."
>
> "29. Plumbo-solvent ability which has been acquired by a water destined to be distributed to consumers may be removed by suitable arrangements for neutralisation. It is an advantage to combine such arrangements for neutralisation with sand filtration."
>
> "30. It would appear, as a natural outcome of this inquiry, that the circumstances of every supply of moorland origin should be considered with reference to the factors of plumbo-solvency which exist upon it; and in this report I have endeavoured to make clear the nature of these factors and their relative importance. It is advisable in the case of existing works, to test, not only in the reservoirs and main streams, but also in the tributary streams and subsidiary "feeders" during different seasons of the year, and under ordinary and extraordinary conditions of the rainfall, in order to arrive at a satisfactory conclusion as to the liability of the supply in general, and of its constituent waters, to acquire plumbo-solvent ability. Study of this sort affords the most satisfactory means of determining how best to apply the remedy, or combination of remedies, needed in the particular instance. In the case of proposed new waterworks, this inquiry indicates the necessity of a careful survey of the physical characters of the gathering grounds, as well as of ascertaining the

proportion of spring water to surface water at different times of the year and under different conditions of rainfall, and of testing the quality of the spring water and its power of neutralising acid, and the quality of the surface water, especially during wet weather and sudden storms following a period of drought."

Special provisions for the prevention of lead poisoning.

The following are recent instances in which specific requirement has been made for the treatment of the water before distribution so as to prevent it acting on lead in such manner as to endanger the health of the consumers: Stockport Corporation Water Act, 1901, s. 25; Skipton Water and Improvement Act, 1904, s. 16; Bolton Corporation Act, 1905, s. 24; Rhondda Urban District Council Act, 1905, s. 8; Todmorden Corporation Act, 1906, s. 10; Ashton-under-Lyne, Stalybridge and Dukinfield (District) Waterworks Act, 1907, s. 19; Pontypridd Waterworks and Tramroad Act, 1908, s. 12, and Northallerton Waterworks Act, 1909, s. 19.

Joint boards.

As to precedents of joint boards either for purposes of water supply or for gas and water supply combined see *ante*, p. 34.

Profits of water undertaking in the hands of local authority.

As a rule where the water supply is in the hands of a local authority, they are authorised by Parliament to apply any surplus profit, after payment of loan and sinking fund charges, towards the relief of the borough or general district fund. See this subject treated, *ante*. p. 29, and the instance of the Stockport Act, 1899, there mentioned. For further information as to undertakings in the hands of local authorities, the surplus profits made in each case, and the manner in which the same are disposed of, see the Municipal Trading (United Kingdom) Returns ordered by the House of Commons on December 20th, 1906, giving particulars of the financial results of reproductive municipal undertakings for each of the last four years for which figures were available. Parliamentary Papers 171 of Session 1909, (6 vols.).

Powers generally of a statutory company.

When the water supply is in the hands of a company, the public Acts of 1847 and 1863, incorporated with their special Act, regulate their rights and obligations. Their duty to supply pure and wholesome water is referred to, *post*, p. 467. Since the decision of the House of Lords in the case of *Dobbs* v. *Grand Junction Waterworks Co.*, "annual value," when that or some equivalent expression is the basis on which companies are entitled to make their charge, must be taken to mean net annual value, that is to say, rateable value. See more fully, *post*, p. 506. In all modern Acts "rateable value" is made the basis of charge. As to the metropolis, see the Water Rate Definition Act, 1885, referred to *post*, p. 505.

"Annual value."

"Domestic purposes."

The decisions as to what comes within domestic supply are dealt with *post*, p. 468. Some recent Water Acts contain definitions of what is, and is not, included in domestic supply. "Domestic purposes" are defined by the Metropolitan Water Board (Charges) Act, 1907, s. 25 to "be deemed to include water-closets and baths, constructed or fitted so as not to be capable of containing when filled, or filled up to the overflow or waste pipe (if any), more than eighty gallons, but shall not include a supply of water for any of the following purposes (namely), steam, gas, motor and other like engines, railway purposes, ventilating purposes, working any machine or apparatus, consumption by or washing of horses and cattle, washing carriages or other vehicles, watering gardens by means of any outside tap or hose, tube, pipe, sprinkler or other like apparatus, fountains, or any ornamental purpose, cleansing sewers and drains, cleansing and watering streets or roads, fire extinction, flushing drains by means of any apparatus discharging automatically, public pumps, baths or washhouses, any trade, manufacture, or business, any bath constructed or fitted so as to be capable of containing when filled, or filled up to the overflow or waste pipe (if any) more than eighty gallons." See hereon the decision in *Metropolitan Water Board* v. *L. B. & S. C. Rail. Co.*, at p. 697, *post.*

The Camborne Water Act, 1908, s. 18, provides that "a supply of water for domestic purposes shall not include a supply of water for cattle or for horses, or for washing carriages, motor-cars, or other vehicles, or for any trade, manufacture or business, or for washing house or shop fronts, or windows, by means of a hose or jet, or for watering gardens, for fountains, or for any ornamental purposes whatsoever." See also Portishead District Water Act, 1907, s. 21.

Maintenance of fire-plugs, etc., in public highways.

The rights and liabilities of local authorities and companies respectively with regard to the maintenance, in the highways, of fire-plugs, stop-cocks, and other apparatus in connection with water supply are treated *post*, p. 480.

Cutting off supply for non-payment of water rates.

Sect. 74 of the Waterworks Clauses Act, 1847, provides that if any person supplied with water by the undertakers neglects to pay the water rate when due, the undertakers may cut off the supply, and may also recover the rate, if less than £20, together with the cost of cutting off the supply, in a summary manner, and in other cases by action. By the Water Companies (Regulation of Powers) Act, 1887, it is now provided that the water shall not be cut off where the owner, and not the occupier, is liable by law or by agreement with the water company to the payment of the water rate; but such water rate, without prejudice to other remedies, shall, along with interest at 5 per cent.,

Water Companies (Regulation of Powers) Act, 1887.

be a charge on the premises in priority to all other charges affecting the premises. See more fully, *post*, p. 517, where the decisions under this Act are noted.

Waste, misuse, etc., of water.

The subject of the prevention of the waste, misuse, or contamination of water is specially dealt with, *post*, pp. 713 *et seq.* Where a constant supply is afforded, companies and local authorities are armed by Parliament with the power of making (subject to the approval of the Local Government Board) and enforcing regulations for the prevention of waste and misuse of water.

Rivers Pollution Prevention Act, 1876.

Mersey and Irwell Rivers of West Riding.

Border rivers.

The Rivers Pollution Prevention Act, 1876, is set out, *post*, p. 725, and the decisions under the Act are noted. The special legislation with regard to the Mersey and Irwell, and their tributaries, and with regard to the rivers of the West Riding and their tributaries, will be found, *post*, pp. 764 *et seq.*, and pp. 771 *et seq.* For the Act of 1898, enabling the county councils on either side of the Border to act together for the prevention of the pollution of rivers, see *post*, p. 755.

Rivers Pollution Prevention Act, 1893.

A very notable alteration of the law was effected by the Rivers Pollution Prevention Act, 1893 (56 & 57 Vict. c. 31). It had theretofore been decided (see the cases, *post*, p. 731) that where sewers existed prior to 1875, and were not constructed by the local authority, but only became vested in them under that Act, the local authority could not be made responsible for pollution of streams caused by the use of such sewers by persons who had acquired a right to drain into them. The Act of 1893 now provides that "where any sewage matter falls or flows or is carried into any stream after passing through or along a channel which is vested in a sanitary authority, the sanitary authority shall for the purposes of s. 3 of the Rivers Pollution Prevention Act, 1876, be deemed to knowingly permit the sewage matter so to fall, flow, or be carried" (see *post*, p. 754).

Limited Owners Reservoirs and Water Supply (Further Facilities) Act, 1877.

By the Limited Owners Reservoirs and Water Supply (Further Facilities) Act, 1877, it is provided that the construction or erection of reservoirs or other works of a permanent character for the supply of water to persons residing or engaged in labour on the lands on which such works are situate, or on any other lands settled to the same uses, or for the more convenient or profitable user of such lands, or for the supply of water to any sanitary or other local authority or water company, or to any manufacturer or other person, or for any one or more of such purposes, shall be deemed to be an improvement of land within the meaning of s. 9 of the Improvement of Land Act, 1864, and shall be sanctioned by the commissioners if it can be shown to their satisfaction that such reservoirs or works for the supply of water will for any purpose effect a permanent yearly increase in the value of the lands on which they are situate, or any other lands settled to the same uses, or will be permanently productive of a yearly revenue to the owner of such lands, exceeding the yearly amount proposed to be charged thereon; and the construction of any such works shall be deemed to include the purchase by the landowner of any water right or other easement which might otherwise interfere with or prevent the construction of the same, or any such supply of water as aforesaid (see the Act, *post*, p. 709).

District Councils (Water Supply Facilities) Act, 1897.

By the District Councils (Water Supply Facilities) Act, 1897, it is provided that when any person who is a landowner within the meaning of the Improvement of Land Act, 1864, contributes any money towards the expenses incurred by a district council for the purpose of supplying water to any lands of such landowner (whether together with other lands or not), the amount so contributed may, with the sanction of the Board of Agriculture, be charged on the land of the landowner (see the Act, *post*, p. 930).

Certain clauses generally inserted in Water Acts.

As in the case of gas so in the case of water, the public general Acts no longer contain all the provisions usually contained in Water Acts. Among the clauses usually inserted in modern Water Acts are:

(1.) Power to make agreements with owners, etc., in regard to drainage of lands within the drainage area of reservoirs, etc.

(2.) Power to hold lands for protection of waterworks.

(3.) Limiting power to abstract water, *i.e.*, no well to be sunk upon, or works to be constructed for taking or intercepting water from, any lands acquired unless the works and the lands upon which the same are to be constructed are specified.

(4.) Byelaws for preventing pollution of water. (This clause is allowed only when the waterworks of a large town are situate beyond its limits, and it is expedient that the byelaws should be enforced by the authority owning the waterworks).

(5.) Power to acquire easements in respect of works to be constructed underground, but on compulsory acquisition owner may require land to be taken.

(6.) Rates to be payable by owners of small houses let to tenants by the week or month, or for less than a quarter.

(7.) Power to supply water for other than domestic purposes on such terms as may be agreed, and power to supply water by measure either for domestic or other purposes.

(8.) No obligation to supply otherwise than by meter houses partly used for trade. [When this clause is inserted a maximum rate per 1,000 gallons must be fixed by the Bill.

(9.) No obligation to supply more than one house by means of the same communication pipe, and undertakers may require a separate pipe to be laid to each house.

(10.) Notice of discontinuance of supply to be in writing.

(11.) Byelaws for the prevention of waste, misuse, or contamination of water.

(12.) Power to sell or let meters and fittings connected therewith.

(13.) Notice of connecting or disconnecting meters.

(14.) Power with respect to persons injuring meters, etc.

(15.) Power to furnish, repair, or alter (but not to manufacture) pipes, valves, cocks, cisterns, baths, meters, etc.

(16.) Power to lay pipes in streets not dedicated to the public use.

(17.) Contracts for supply of water in bulk beyond the limits,

(18.) Power to local authority, etc., to supply, in case company fails to supply after a time limited—usually five years.

(19.) A copy of the Act to be delivered to the Registrar of Joint Stock Companies for registration by him.

(20.) Demands recoverable in county court if within limit of its jurisdiction.

Other clauses inserted in Water Acts.

All the foregoing have found their way into the Model Water Bill, *post*, p. 701. Other provisions found in Water Acts may be here referred to.

A special section (s. 20) as to entry into buildings to inspect fittings will be found in the Merthyr Tydfil U. D. C. Act, 1903 (3 Edw. 7, c. cxiv.); see also Torquay Corporation Water Act, 1903 (3 Edw. 7, c. cvi.), s. 33.

Power is frequently given to temporarily discharge water from reservoirs, etc., into neighbouring streams or watercourses. The following section is from the Bath Corporation Water Act, 1903 (3 Edw. 7, c. ccvii.):

> "21. (1) For the purpose of sinking any well or constructing enlarging extending repairing cleansing or examining any aqueduct conduit or reservoir authorised by this Act, the Corporation may cause the water in such well aqueduct conduit or reservoir to be temporarily discharged into any available stream or watercourse.
>
> "(2) In the exercise of the power conferred by this section, the Corporation shall do as little damage as may be and shall pay compensation to all persons for all damage sustained by them by the exercise of such power the amount of compensation to be settled in default of agreement by arbitration in accordance with the provisions of the Arbitration Act, 1889."

There are similar sections in many recent Acts, including the following Acts of Session 1909: Aldershot (s. 38); Clevedon (s. 55); Clydebank and District (s. 22); Frimley and Farnborough (s. 24); Grantham (s. 44); Lisburn (s. 41); Llanelly (s. 13); Oldham (s. 10); Risca (s. 23); St. Andrews (s. 23); Stourbridge and District (s. 51); Wakefield (s. 6); Worksop (s. 10).

The following precedent is taken from the Bath Corporation Water Act, 1903 (3 Edw. 7, c. ccvii.):

> "22. (1) The provisions of the Waterworks Clauses Act, 1847, with respect to the breaking up of streets shall apply with the necessary modifications to the construction laying down erection and maintenance in any streets or roads of the conduits by this Act authorized and of any discharge pipes telephone or telegraph posts wires conductors or apparatus which the Corporation may and which they are hereby authorised to erect or lay down for the purposes of their water undertaking."
>
> "(2) Provided that no telephonic or telegraphic apparatus made and maintained under the authority of this Act shall be used for the purpose of transmitting telegrams in contravention of the exclusive privilege conferred upon the Postmaster-General by the Telegraph Act, 1869."

See also Scunthorpe U. D. C. Act, 1903, s. 20; Torquay Corporation Water Act, 1903, s. 25; Preston Corporation Water Act, 1904, s. 19.

The following section is contained in the Sutton District Waterworks Act, 1903 (3 Edw. 7, c. xviii.):

> "6. The Company may undertake to pay the Postmaster-General any loss he may sustain by reason of the establishment or maintenance at their request of any post or telegraph office or of any additional facilities postal or otherwise in any rural district in connection with the works authorised by this Act and any expense incurred by the Company under such undertaking may be defrayed out of the funds or revenue of the Company."

See also Skegness Water Act, 1905, s. 39; Holyhead Water Act, 1906, s. 6; Portsmouth Water Act, 1906, s. 10; Great Yarmouth Waterworks, etc., Act, 1907, s. 56; Newquay and District Water Act, 1907, s. 27; Holderness Water Act, 1908, s. 84; Pontypridd Waterworks and Tramroad Act, 1908, s. 95.

In many modern Water Acts a clause is inserted authorising the undertakers on selling any lands acquired for their water undertaking and not required for that purpose to reserve to themselves all water rights. The following is taken from the Bury and District Joint Water Board Act, 1903 (3 Edw. 7, c. ccxxxiv.):

> "26. The Board on selling any lands acquired for or in connection with their water undertaking and not required for that purpose may reserve to themselves all or any part of the water rights or other easements belonging thereto and may make the sale subject to such reservations accordingly and may also make any such sale subject to such other reservations special conditions restrictions and provisions with respect to use of water, exercise of noxious trades or discharge or deposit of manure sewage or other impure matter and otherwise as they may think fit."

For recent instances see Lisburn U. D. C. Act, 1909, s. 46; Northallerton Waterworks Act, 1909, s. 21; Risca U. D. C. Act, 1909, s. 19.

A clause which enables undertakers to acquire portions only of certain lands, buildings, and property, where such portions may be severed from the remainder without material detriment thereto, is now frequently met with in modern Water Acts. See, *e.g.*, Merthyr Tydfil Urban District Council Act, 1903, s. 34; Chesterfield Gas and Water Board Act, 1904, s. 10; Derwent Valley Water Act, 1904, s. 17; Thurles U. D. C. Act, 1904, s. 20; Doncaster Corporation Act, 1904, s. 29; Barrow Corporation Act, 1904, s. 37; Shipley U. D. C. Act, 1904, s. 27; Dundee Water Order Confirmation Act, 1905, s. 14; Truro Water Act, 1905, s. 12; Manchester Corporation Act, 1906, s. 12; Blairgowrie, Rattray and District Water Board Order Confirmation Act, 1906, s. 42; Accrington District Gas and Water Board Act, 1906, s. 9; Newquay and District Water Act, 1907, s. 17; Metropolitan Water Board (Various Powers) Act, 1907, s. 22; Birkenhead Corporation Water Act, 1907, s. 9; Manchester Corporation Act, 1908, s. 14; Troon (Loch Bradan) Water Order Confirmation Act, 1908, s. 21; Pontypool Gas and Water Act, 1909, s. 43; Watford U. D. C. Act, 1909, s. 16.

Occasionally provisions are to be found requiring the waters to be so treated as to reduce the natural hardness thereof to the extent that the water after such treatment shall not exceed so many degrees in hardness. See, *e.g.*, Bolsover and District Provisional Order, 1903, s. 18; Sutton District Waterworks Act, 1903, s. 7; Bungay Water Act, 1909, s. 33; West Gloucestershire Water Act, 1909, s. 17.

The following precedent is taken from the Mid-Kent Water Order, 1903, s. 10:

> "If and whenever the undertakers in the exercise of any power in that behalf possessed by them sink any well in any parish within the new limits of supply as defined by this Order they shall before supplying water obtained from such well to any other part of the said new limits furnish continuously at the same rates and upon the same conditions as the undertakers are bound to supply water within their existing limits of supply to the inhabitants of that parish such water as may be demanded by them for their reasonable sanitary and domestic requirements."

In some instances a clause is inserted enacting that notwithstanding anything in the Lands Clauses Consolidation Act, 1845, the promoters may retain hold and use for such time as they may think fit, and may from time to time sell, lease, etc., land in such manner and for such consideration, and on such terms and conditions as they think fit. See, *e.g.*, Derwent Valley Water Act, 1904, s. 34; Gosport Water Act, 1904, s. 20; Preston Corporation Water Act, 1904, s. 17; Barrow Corporation Act, 1904, s. 37; Ebbw Vale Water Act, 1904, s. 16; Barnet District Gas and Water Act, 1904, s. 18; Oakengates and Dawley Joint Water Board Act, 1904, s. 38; Skipton Water and Improvement Act, 1904, s. 37; Doncaster Corporation Act, 1904, s. 30; Selby U. D. C. Act, 1904, s. 60; Loughborough Corporation Act, 1905, s. 10; Malvern Water Act, 1905, s. 20; Mansfield Corporation Water Act, 1905, s. 25; Accrington District Gas and Water Board Act, 1906, s. 12; Borough of Portsmouth Waterworks Act, 1906, s. 12; Keswick U. D. C. (Water) Act, 1907, s. 15; Metropolitan Water Board (Various Powers) Act, 1907, s. 53; Newquay and District Water Act, 1907, s. 22; Penrith U. D. C. Act, 1907, s. 47; Ammanford U. D. C. (Water) Act, 1908, s. 13; Cardiff Corporation Act, 1909, s. 26; Llanelly Waterworks Act, 1909, s. 21; and Stourbridge and District Water Board Act, 1909, s. 48.

There are precedents for a clause making the auction clauses apply to loan capital. The following is taken from the City of Norwich Waterworks Act, 1904, s. 13:

> "The provisions of this Act with respect to the sale by public auction or tender of shares or stock created under the authority of this Act, the application of the premiums arising from such sale and other the provisions incidental to such sale shall apply *mutatis mutandis* to

> and in relation to the granting of mortgages and issue of debenture stock by the Company under this Act."

See also Southend Waterworks Acts, 1904, s. 19, and 1907, s. 39. As to the occurrence of such a clause in Gas Acts, see *ante*, p. 7.

Power to Lay Pipes, etc., for Ancillary Purposes.—A clause of this nature applicable to both gas and water occurs in the Bexhill Water and Gas Act, 1904, s. 58. For similar clauses introduced into Gas Bills, see *ante*, p. 50.

The following section occurs in the Brymbo Water Act, 1904:

> "The Company may in and upon the lands acquired within the said gathering areas construct and lay down drains cuts sewers watercourses and other works and conveniences necessary or proper for the purpose of intercepting or taking all foul waters arising or flowing upon such lands or necessary or proper for preventing the water which the Company are empowered to take from being polluted fouled contaminated discoloured encroached upon or injured, and the Company may for the purposes aforesaid carry any such drain cut sewer or watercourse under across or along any street or road within or adjoining the lands in the said gathering areas subject and according to the provisions of the Waterworks Clauses Act, 1847, with respect to the breaking up of streets for the purpose of laying pipes."

Similar provisions are very generally included in recent Water Acts.

For a power to lay mains outside water limits in streets forming the boundary of any parish within the water limits, see Barnet District Gas and Water Act, 1904, s. 19.

Water Supply to large Institutions.—In some recent Acts and Provisional Orders it is enacted that the supply of water to large institutions shall be by meter unless otherwise agreed. See, *e.g.*, Barnet District Gas and Water Act, 1904, s. 27; Selby U. D. C. Act, 1904, s. 19; Littlestone-on-Sea and District Water Act, 1904, s. 39; Bradfield Water Provisional Order, 1904, s. 16; South Lincolnshire Water Act, 1906, s. 44; North Sussex Gas and Water Act, 1906, s. 16; Selsey Water Act, 1907, s. 27; Metropolitan Water Board (Charges) Act, 1907, s. 20; Holderness Water Act, 1908, s. 67; Chelsham and Woldingham Water Order, 1910, s. 23.

Power to Grant Gratuities to Officers and Servants.—Selby U. D. C. Act, 1904, s. 187; Swindon Corporation Act, 1904, s. 164; Accrington District Gas and Water Board Act, 1905, s. 28; Southport, Birkdale and West Lancashire Water Board Act, 1905, s. 37; Perth Corporation Gas Order Confirmation Act, 1906, s. 27; Colne Valley Water Act, 1907, s. 32; Harrogate Gas Act, 1909, s. 27.

Dwelling-houses for Workmen.—See, *e.g.*, Selby U. D. C. Act, 1904, s. 63; Bangor (County Down) Water and Improvement

Act, 1905, s. 34; Hythe Corporation Act, 1905, s. 12; Skegness Water Act, 1905, s. 36; Poole Corporation Water Act, 1906, s. 35; Colne Valley Water Act, 1907, s. 33; Devonport Corporation Act, 1907, s. 15; Briton Ferry U. D. C. Act, 1908, s. 11; Camborne Water Act, 1908, s. 25; Frimley and Farnborough District Water Act, 1909, s. 20; Grantham Waterworks Act, 1909, s. 45; Stourbridge and District Water Board Act, 1909, s. 91; and West Gloucestershire Water Act, 1909, s. 11.

Local Authorities being Undertakers to have Powers of s. 54 *of Public Health Act*, 1875, *as to carrying Water Mains within and without their District.*—See, *e.g.*, Ebbw Vale Water Act, 1904, s. 22; Skipton Water and Improvement Act, 1904, s. 14; Oakengates and Dawley Joint Water Board Act, 1904, s. 43; Hythe Corporation Act, 1905, s. 21; Mansfield Corporation Act, 1905, s. 15; Poole Corporation Water Act, 1906, s. 44; Ashton-under-Lyne, etc. Waterworks Act, 1907, s. 15; Penrith U. D. C. Act, 1907, s. 16; Burnley Corporation Act, 1908, s. 12; Risca U. D. C. Act, 1909, s. 26; Stourbridge and District Water Board Act, 1909, s. 53.

As to one effect of such a section, see *Hill* v. *Wallasey Local Board*, cited under s. 54 of the Public Health Act, 1875, *post*, p. 858.

Limit of Interest on Borrowed Capital in Water Provisional Orders.—A clause for this purpose is always inserted in Provisional Orders under the Gas and Water Works Facilities Act, 1870.

Abatement of Rates when Part of a District is Supplied by a Local Authority and another Part by a Company at a Higher Rate.—Where the water supply of part of a district is in the hands of the local authority and the supply of the rest of the district is in the hands of a company provision has been made in some cases for a deduction from the general district rate in favour of the ratepayers in the company's area if and so long as the charges for water are higher than in the area supplied by the local authority. The rebate is to be such "as shall in the opinion of the corporation fairly represent the difference for the year or half-year as the case may be" between the two sets of water rates. See, *e.g.*, Birkenhead Corporation Water Act, 1907, s. 78, and Watford Urban District Council Act, 1909, s. 33.

Power to Directors to fix Remuneration of Secretary.—This power has been given in several recent Gas Acts, see *ante*, p. 52. For an instance in which it is included in a Water Act, see Truro Water Act, 1905, s. 37.

Detection of Waste.—The following provision is found in the Frimley and Farnborough District Water Act, 1909, s. 55:

> "Subject to the provisions of the Waterworks Clauses Act, 1847, the Company may for the purpose of preventing and detecting waste affix and maintain meters and similar apparatus on the service pipes and mains of the Company and stopcocks in the pipes supplying houses with water and may insert in the roads or footways the necessary covers or boxes for giving access and protection thereto and may for that purpose break up and interfere temporarily with public and private streets, roads, lanes, footways, courts, passages, tramways, gas or water pipes, electric lines, wires and apparatus: provided that the Company shall not break up or interfere with any electric lines, wires or apparatus of the Postmaster-General except in accordance with and subject to the provisions of the Telegraph Act, 1878."

For other instances see Southport, Birkdale and West Lancashire Water Board Act, 1905, s. 26; Higham and Hundred of Hoo Water Act, 1905, s. 23; Holyhead Water Act, 1906, s. 23; Portishead District Water Act, 1907, s. 18; Newquay and District Water Act, 1907, s. 34; Penrith U. D. C. Act, 1907, s. 29; Llanelly Waterworks Act, 1909, s. 31; South Staffordshire Water Act, 1909, s. 37; and Stourbridge and District Water Board Act, 1909, s. 64.

Purchase by outside authority of their portion of the undertaking.

The subject of the purchase by outside authorities of their portion of an undertaking is dealt with *ante*, p. 37. See also the instance of the Stockport Act, 1899, mentioned *ante*, p. 39.

Compulsory purchase of water undertakings by local authorities.

The subject of the compulsory acquisition by local authorities of gas and water undertakings is dealt with *ante*, p. 40. The various precedents for and against compulsory acquisition will be found as regards non-statutory undertakings in Schedule C, *post*, p. 129, and as regards statutory undertakings, in Schedule D, *post*, p. 132.

Water diviners.

In reply to a question put in the House of Commons, on August 7th, 1899, on the subject of certain disallowances which had been made in the accounts of urban district councils of moneys paid from the rates for the employment of water diviners, Mr. Chaplin, then President of the Board, stated: "Three appeals had been made to the Local Government Board against disallowances of the kind referred to in the question. The sums disallowed were £13 8*s.* 7*d.*, £7 13*s.* 6*d.*, and £3 8*s.* The disallowances were made in May and August, 1897, and in August, 1898. One of the appeals is at present before the Board, but in the other two cases they have allowed the appeals. The decisions were given in October, 1898, and March, 1899. The Board did not deem it necessary to consult the Law Officers of the Crown on the case. They were advised by their own legal adviser that the reasons assigned by the auditor for making the disallowance did not support the action he took in point of law; but at the same time they stated that they could not but consider that the action of the district council had been unwise in the matter" (Hansard, 4th ser., vol. 76, p. 22). See also a reversal of a disallowance by an auditor referred to in the *L. G. Chronicle*, 20th May, 1905, p. 508.

A water diviner having been consulted by a landed proprietor indicated a place where water would be found at a depth of 25 to 30 feet. The proprietor sunk the well at a cost of £42 6*s.* 8*d.* but found no water. She brought an action in the county court against the water diviner to recover the amount. The judge found on the evidence that the defendant had made a statement that water would be found at the depth stated recklessly and with the knowledge that the plaintiff would act upon it. He based his finding of recklessness on the fact that the defendant stated in evidence that he had no means of knowing the depth of the water. The county court judge therefore gave judgment for the plaintiff, for £42. The case afterwards came before a Divisional Court on a case stated; and the judgment of the county court judge was upheld (*Pretty* v. *Child* (1902), 71 L. J. K. B. 512).

A good deal has been written on the subject of the "dowser," and he was honoured by mention in the course of the presidential address of Mr. James Mansergh, at the Institution of Civil Engineers on November 6th, 1900 (see p. 28 of the Address). See also the article there referred to "On the so-called Divining Rod or *Virgula Divina*," by Professor W. F. Barrett, published in the proceedings of the Society for Psychical Research for July, 1897, and a supplement to the same paper by the same author, published in the proceedings of the same society for October, 1900. See also Tompkins' "Theory of Water Finding by the Divining Rod," and articles in the *Journal of Gas Lighting*, 7th February, 1905, p. 355, and 14th February, 1905, p. 421.

METROPOLIS WATER.

Transfer of undertakings of water companies to Metropolitan Water Board.

Formerly eight companies supplied the metropolis with water. These were the New River Company, the East London Company, the Chelsea Company, the West Middlesex Company, the Grand Junction Company, the Lambeth Company, the Southwark and Vauxhall Company, and the Kent Company. The districts supplied by the first five of these were on the north side of the river Thames, and those supplied by the last three on the south side. The undertakings of these companies were transferred to the Metropolitan Water Board under the provisions of the Metropolis Water Act, 1902.

The various public Acts regulating the water supply of the metropolis will be found *post*, pp. 549 *et seq.*

Water Regulations.

The history of the "Water Regulations" in force in the metropolis, and of the attempts which have been made to alter them, is dealt with *post*, p. 714, and the Regulations themselves will be found *post*, p. 716.

Water Rate Definition Act, 1885.

By the Water Rate Definition Act, 1885, it is enacted that the words "the annual value of the tenement supplied with water" in s. 68 of the Act of 1847 shall, within the unions and parishes to which the Valuation of Property (Metropolis) Act, 1869, extends, mean the rateable value as settled from time to time by the local authority as duly constituted (see the Act, *post*, p. 586).

London Water Act, 1892.

By the London Water Act, 1892, the London County Council are given power from time to time to pay the costs and expenses of promoting Bills in Parliament relating to the supply of water in the administrative county of London, and within the limits of supply of the metropolitan water companies. See *post*, p. 587.

Duke of Richmond's Commission. 1869.

The subject of the water supply of the metropolis has engaged the attention of several Royal Commissions and Parliamentary Committees. These will be briefly referred to. The Duke of Richmond's Commission in 1869 reported as regards the water supply of the metropolis that "the future control of the water supply should be entrusted to a responsible public body, with powers conferred on them for the purchase and extension of existing works . . ." (p. cxxvii. of Report).

Sir William Harcourt's Committee, 1880.

Through the services of the late Mr. E. J. Smith, on the invitation of Sir Richard Cross, then Home Secretary, provisional agreements for the purchase of the various water companies were come to in 1880. These were submitted to a Select Committee of the House of Commons, presided over by Sir William Harcourt. In the result the agreements were dropped. The Committee reported: "That it is expedient that the supply of water to the metropolis should be placed under the control of some public body which shall represent the interests and command the confidence of the water consumers."

City of London inquiry, 1890.

In 1890 an independent inquiry on the subject of metropolitan water supply was held by a committee appointed by the corporation of the city of London, and presided over by Sir Guyer Hunter. The committee recommended that the metropolitan water supply should be taken over by a public authority.

Sir Matthew White Ridley's Committee, 1891.

In 1891 a Bill (commonly referred to as the Vestries Bill) was promoted by the vestries of certain London parishes for the constitution of a water trust, and for the compulsory acquisition of the undertakings of the London water companies. This, with certain other cognate Bills, was referred to a Select Committee of the House of Commons in 1891, presided over by Sir Matthew White Ridley. The Committee concluded their report by stating: "Of the two Bills before your Committee for the constitution of a new water authority neither appeared to them calculated to effect a satisfactory solution of the problem, but your Committee desire to place upon record their opinion that both those Bills were promoted in the public interest and to considerable public advantage." They reported, however, suggesting further inquiries by the London County Council, and recommended that if the London County Council should so resolve, they should have power to promote a Bill or Bills in Parliament for the purpose of constituting themselves the responsible water authority for London, with power to purchase (by agreement or arbitration) the various undertakings, either alone or in conjunction with such of the authorities of the outside areas as might be arranged.

Royal Commission, 1892—Lord Balfour of Burleigh, Chairman.

A Royal Commission was appointed in 1892 on the subject of the metropolitan water supply. The Commissioners were commanded to ascertain, "Whether, taking into consideration the growth of the population of the metropolis and the districts within the limits of the metropolitan water companies, and also the needs of the localities not supplied by any metropolitan company, but within the watersheds of the Thames and the Lea, the present sources of supply of these companies are adequate in quantity and quality; and, if inadequate, whether such supply as may be required can be obtained within the watersheds referred to, having due regard to the claims of the districts outside the metropolis, but within those watersheds, or will have to be obtained outside the watersheds of the Thames and the Lea." The valuable report of the Royal Commissioners is dated September 8th, 1893. The Commissioners were Lord Balfour of Burleigh, Chairman; Sir George B. Bruce, C.E.; Sir Archibald Geikie; Professor James Dewar; Mr. George Henry Hill, C.E.; Mr. James Mansergh, C.E.; and Dr. William Ogle. They reported making many recommendations as to the prevention of pollution, and the treatment of water after abstraction from the river, and they further reported, *inter alia*: "We are strongly of opinion that the water, as supplied to the consumer in London, is of a very high standard of excellence and of purity, and that it is suitable in quality for all household purposes. . . ." With respect to the quantity of

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water which can be obtained within the watersheds of the Thames and the Lea, they reported: "We are of opinion that, if the proposals we have recommended are adopted, a sufficient supply to meet the wants of the metropolis for a long time to come may be found without any prejudice to the claims, or material injury to the interests of any districts outside the area of Greater London." The recommendations referred to included the construction of storage reservoirs in the Thames Valley "at no great distance above the intakes of the companies," whereby an average daily supply of 300 million gallons a day might be obtained. The report and evidence (with maps, plans, and diagrams) form Parliamentary Papers, C. 7,172, C. 7,172, 1, and C. 7,172, 2, of 1893.

London County Council Purchase Bills of 1895.

In the Session of 1895 the London County Council promoted Bills to authorise the compulsory purchase by them of the undertakings of the several water companies. The special feature of these Bills was a clause defining the matters to be taken into account by the arbitrators. These Bills were referred to a Committee of the House of Commons, presided over by Mr. David Plunket, afterwards Lord Rathmore. These Bills came to nothing, the inquiry not having been concluded before the rising of the House of Commons.

Purchase Bills of 1897.

In 1897 the London County Council again promoted Bills for the purchase of the several water undertakings; and these also contained a special clause as to what the arbitrators were to consider. The Bills were rejected on second reading.

Purchase Bill of 1899.

In 1899 the London County Council again promoted a Purchase Bill containing a special arbitration clause. This Bill also failed to pass. The Llandaff Commission had then been appointed, and had not then made their final report.

Royal Commission appointed 1897.

In the Session of 1897, a Royal Commission was appointed on water supply within the limits of the metropolitan water companies. They were to inquire—

(1.) Whether, having regard to financial considerations and to present and prospective requirements as regards water supply in the districts within the limits of supply of the metropolitan water companies, it is desirable in the interests of the ratepayers and water consumers in those districts that the undertakings of the water companies should be acquired and managed either—

(a) by one authority, or

(b) by several authorities;

and, if so, what should be such authority or authorities.

To what extent physical severance of the works and other property and sources of supply of the several companies, and the division thereof between different local authorities within the limits of supply, are practicable and desirable; and what are the legal powers necessary to give effect to any such arrangements.

(2.) If the undertakings are not so acquired, whether additional powers of control should be exercised by local or other authorities; and, if so, what those powers should be.

(3.) Whether it is practicable to connect any two or more of the different systems of supply now administered by the eight metropolitan companies; and, if so, by whom, and in what proportion should the cost of connecting them be borne, and what are the legal powers necessary to give effect to any such arrangement.

Viscount Llandaff, Chairman.

The members of the Commission were Viscount Llandaff, Chairman; Rt. Hon. John W. Mellor, Q.C., M.P.; Sir John E. Dorington, M.P.; Sir George B. Bruce, C.E.; Mr. Alfred de Bock Porter, C.B.; Major-General Alexander de Courcy Scott, R.E.; Mr. C. A. Cripps, Q.C.; and Mr. Robert Lewis. The final report of this Royal Commission (Parliamentary Paper, 1899, Cd.—25) is an invaluable document in connection with metropolitan water supply, especially on account of the exhaustive examination of the facts connected with the subject. The Commission recommended purchase, and also recommended that the water supply should be in the hands of a single public authority or Water Board, being a permanent and not a fluctuating body, and consisting of not more than thirty members, "selected on account of their business capacity and, if possible, their knowledge of matters connected with water supply." They suggested that the London County Council should appoint, say, ten members of the Board; the Conservators of the River Thames, four members; the County Councils of Middlesex, Surrey, Essex, Hertford, and Kent, the Lea Conservancy Board, and the Town Council of the Borough of West Ham should each appoint two members; and that the Local Government Board should appoint the chairman and vice-chairman. They further recommended that the appointing authorities should be empowered to fill up any vacancy caused by death or resignation of their representatives, who should hold office for a definite term of years; that the chairman and vice-chairman should receive adequate salaries: that a sum should be allotted annually for division among the other members of the Board, according to their attendances, as was done in

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the case of the Conservators of the River Thames; that the Board should be empowered and required to acquire the undertakings of all the eight metropolitan companies—either by agreement, or, failing agreement, by arbitration, on the terms usual in cases of compulsory purchase—taking over all the existing powers and obligations of the companies. (See their Report, Parliamentary Paper, Cd.—25, of 1899, at pp. 60, 61.)

Purchase Bill of 1900.

The London Water (Purchase) Bill promoted in the Session of 1900 was defeated on second reading in the House of Commons, and the London Water (Welsh Supply) Bill was withdrawn.

Purchase Bill of 1901.

In the Session of 1901 the London Water (Purchase) Bill was again defeated on second reading in the House of Commons.

Metropolis Water Act, 1897.

The Metropolis Water Act, 1897, provides that if at any time complaint as to the quantity or quality of the water supplied by any of the metropolitan water companies for domestic use is made to the Railway and Canal Commission by any water consumer or local authority, the Commission may hear and determine such complaint; and, if satisfied that the complaint is well founded, may order the company, within such reasonable time as is specified in the order, to remove the ground of such complaint, and may enforce such order in like manner as any other order of the Commission, and may award damages to the complainant. The instances of complaints which have, under this Act, been brought before the Commission are noted *post*, p. 589.

Thames Conservancy Act, 1894.

The Acts relating to the Thames Conservancy Board were consolidated and amended by the Thames Conservancy Act, 1894. The sections of that Act relating to the metropolitan water companies will be found *post*, pp. 576 *et seq.* The provisions of the Act of 1894, so far as they relate to the water companies, are not affected by the Port of London Act, 1908, under which the Thames Conservancy were reconstituted.

Lee Conservancy Act, 1900.

Certain further powers were conferred on the Lee Conservancy Board by the Lee Conservancy Act, 1900.

Staines Reservoirs Acts, 1896, and 1898.

In the Session of 1896 the Staines Reservoirs Act was passed. The Bill was promoted by the West Middlesex Waterworks Company, the Grand Junction Waterworks Company, and the New River Company. By it a joint committee of the three companies was appointed, with power to construct three reservoirs and to collect and divert waters of the river Thames and Wraysbury River and the Colne Brook with certain limitations and conditions. By an Act of 1898 enlargements of two of these reservoirs were authorised. See the notes, *post*, p. 579. Lord Llandaff's Commission say, with reference to this storage: "The storage authorised under the Staines scheme, and now under construction, amounts to about 3,300 million gallons. The area of the top water of the reservoirs is 421 acres." (Report, p. 41, para. 104.) The Acts of 1896 and 1898 respectively provided, that in the event of purchase within a limited number of years, no additional value should be claimed in respect of these fresh powers. See also the Staines Reservoirs (Amendment) Act, 1901, *post*, p. 579.

Southwark and Vauxhall Act, 1898.

By an Act of 1898 the Southwark and Vauxhall Company were authorised to construct two additional reservoirs and to take an additional quantity of water from the Thames. See the notes, *post*, pp. 580 *et seq.*

West Middlesex Act, 1899.

By an Act of 1899 the West Middlesex Water Company were authorised to take certain additional water from the Thames. See the notes, *post*, pp. 580 *et seq.*

Metropolis Water Act, 1899.

The object of the Metropolis Water Act, 1899, was to enable and require the metropolitan water companies to supply each other with water in cases of emergency. See the Act, *post*, p. 591.

Sect. 3 provided that if the undertaking of any of the metropolitan water companies was purchased within seven years from the passing of that Act, otherwise than by agreement, by any public body or trustees, nothing in that Act should authorise the company to bring into account or to make any claim in respect of any advantages conferred on them by or resulting from the passing of that Act. This Act passed on June 6th, 1899. By the Staines Reservoirs (Amendment) Act, 1901, the periods which had been fixed by the Staines Reservoirs Acts of 1896 and 1898, within which, in the event of purchase, the water companies were not to be entitled to bring into account the powers thereby conferred, were extended to June 6th, 1906, being the date fixed by the Metropolis Water Act, 1899.

Metropolis Water Act, 1902.

Constitution of Metropolitan Water Board.

The Metropolis Water Act, 1902, established a board, called the Metropolitan Water Board, for the purpose of acquiring by purchase and of managing and carrying on the undertakings of the eight metropolitan water companies, and generally for the purpose of supplying water within the limits of the Act. The board consists of a chairman and vice-chairman, and 38 other members. The chairman and vice-chairman are appointed by the board, and need not be appointed from amongst the members of the board. The members are appointed by various public authorities as provided in the Act.

Provisions as to arbitration.

A Court of Arbitration consisting of three Commissioners was set up by the Act for the purpose of determining the price to be paid to the companies for their undertakings. The Act provided that in fixing the sum to be paid by the Water Board the Court of Arbitration should determine the value of each undertaking as if with the necessary modifications the law of compensation for the purposes of the Lands Clauses Acts were applicable to the case, but that no allowance was to be made for compulsory sale, nor was any enhancement or depreciation of the market value of the stock or shares of the company which was caused, in the opinion of the Court, by the passing or anticipation of the passing of the Act to be taken into account. The Court might make such allowance as they thought just for recoupment of any loss of interest pending reinvestment and for expenditure incurred by the companies in consequence of the Act which ought in the opinion of the Court to be borne by the Water Board. The costs of the arbitration were to be borne by the Water Board.

Provision was made for the dissolution of the companies in due course, for the protection of existing officers and servants of the companies, and for compensation to directors, and to the official auditor of the accounts of the metropolitan water companies.

The provisions of the Act are set forth in *extenso* at p. 596, *post*.

Metropolitan Water Board Act, 1906.

The Metropolitan Water Board Act, 1906, conferred further powers upon the Water Board with regard to the construction of certain works authorised by the East London Waterworks Acts, 1900, and the Southwark and Vauxhall Water Act, 1894, and for raising further moneys. Power is given to the Board to raise money, if they think fit, by the issue of bills instead of by mortgages or stock, subject to regulations to be made by the Local Government Board.

Metropolitan Water Board (Charges) Act, 1907.

The Metropolitan Water Board (Charges) Act, 1907, provides for uniform scales of charges for water applicable throughout the limits of supply of the Water Board. The Act of 1902 required the board to introduce a Bill for this purpose within three years from the appointed day, namely, the 24th June, 1904.

Metropolitan Water Board (Various Powers) Act, 1907.

The Metropolitan Water Board (Various Powers) Act, 1907, conferred further powers upon the Water Board with regard to the construction of works and other matters, and authorised the establishment of a superannuation fund and the borrowing of further moneys.

JOSHUA SCHOLEFIELD.

SCHEDULE A.*

PURCHASE BY LOCAL AUTHORITIES OF THE UNDERTAKINGS OF NON-STATUTORY GAS COMPANIES.

1879. Queenstown Gas.—Bill promoted by a non-statutory company to obtain statutory powers. On opposition of the local authority, a two years' purchase clause was inserted.

1887. Dundalk Gas.—The gas company had been in existence about fifty years without any statutory authority. The undertakers had lately formed a limited company, and in the session of 1886 promoted in Parliament a Bill for re-incorporation and statutory powers. The Bill was opposed by the Dundalk Commissioners. The Committee of the House of Commons found the preamble proved; but the Bill was rejected on third reading in the House itself. In the session of 1887 the company re-introduced their Bill, and the Commissioners introduced a Bill of their own to enable them to undertake gas supply. The latter came on first before a Committee of the House of Lords, presided over by the Earl of Derby. The *locus standi* of the gas company was objected to, but was allowed. The Commissioners were willing to purchase on the footing of a non-statutory company. For the company it was contended that there was no case of competitive works being authorised where a gas company were able and willing to supply gas. The company's Bill contained a purchase clause. The Committee allowed it to proceed, and rejected the Bill of the Commissioners. Before the Committee of the House of Commons (the Earl of March, chairman) the contention was whether or not there should be a no-enhancement clause, *i.e.*, whether the undertaking in the event of a purchase should be regarded as a statutory or a non-statutory company. For the Commissioners it was urged that a no-enhancement clause had been inserted in the Queenstown Gas Act, 1879 (non-statutory). The Committee inserted such a clause.

1891. Rhyl Gas.—Bill of non-statutory company for further capital. Under a local Act the Rhyl Commissioners could not set up works of their own without purchasing. Committee of H. C. (Sir William Houldsworth, chairman) gave three years for exercise of option to purchase, and no enhancement. In H. L. an agreement was come to and scheduled.

1891. Glasgow Corporation (Partick, Hillhead, and Maryhill) Gas—In 1869 the Corporation of Glasgow acquired the gas undertaking of two companies then supplying gas within Glasgow and the neighbourhood. Partick, Hillhead and Maryhill were not within the limits of the city of Glasgow, but were within the gas limits. Glasgow had power to charge a differential rate in these three burghs. This led to dissatisfaction on the part of the consumers in those places, and a limited company was formed in 1871 for the purpose of supplying these districts with gas. This limited company had no parliamentary powers, but were permitted by the local authorities as occasion required to break up the streets for the purpose of laying and maintaining the gas pipes. In 1873 the limited company promoted a Bill for re-incorporation and for statutory powers. This Bill was opposed by the Corporation of Glasgow successfully, and it was thrown out. Several unsuccessful attempts were made by the Corporation of Glasgow to include Partick, Hillhead and Maryhill within their limits. In 1890 the limited company again promoted a Bill for re-incorporation and statutory powers. This Bill was again opposed by the Corporation of Glasgow, and it was rejected (H. C., Mr. (afterwards Sir) Theodore Fry, chairman). It appeared that at that time Glasgow supplied 20 per cent. of the gas used in these burghs and the company supplied 80 per cent. In the course of the case the counsel for the company offered to sell on arbitration terms as a going concern. This offer was refused. After this the parties concerned entered upon negotiations which resulted in an agreement for the purchase by the corporation of the company's undertaking upon certain agreed terms which were embodied in an agreement scheduled to the Glasgow Corporation (Partick, Hillhead and Maryhill) Gas Act, 1891.

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* For much of the information contained in Schedules A, B, C, and D, the Editor is indebted to the parliamentary reports of the *Journal of Gas Lighting and Water Supply.*

1894. Ambleside Gas.—A non-statutory company promoted a Bill to obtain statutory powers and additional capital. The local board opposed, asking for a purchase clause. In opening, counsel for the Bill stated that they did not offer strenuous opposition to purchase if limit of time fixed. Local board pressed for rejection of Bill, which it was alleged was really to enhance prices by obtaining statutory powers. They gave a pledge to come for a Purchase Bill in the next session, and offered to continue negotiations in the meantime. Company's Bill rejected by H. C. Committee (Sir James Kitson, chairman. In the session of 1895 the local board promoted a Purchase Bill, which was passed.

1894. Falkirk Gas.—A non-statutory company promoted a Bill to obtain statutory powers and further capital. The Corporation of Falkirk promoted a Bill to construct gasworks of their own, and also to purchase by agreement the undertaking of the company. In the result the corporation Bill was passed. This was practically the result of agreement between the parties, the only difference between them ultimately being in regard to the terms of the purchase clause.

1896. Cowes Gas.—A non-statutory company promoted a Bill for statutory powers and further capital. The local authority opposed, and asked for a purchase clause. Company contended no precedent. Opponents relied on Dundalk case, but it was pointed out that in that case the Dundalk Corporation were also in Parliament with a Purchase Bill. The Committee of the House of Lords (Lord Camperdown, chairman) allowed the Bill to proceed, and refused the purchase clause. The local authority again opposed in the House of Commons; the Committee inserted a three years' purchase clause.

1896. Whittington Gas.—A non-statutory company promoted a Bill for statutory powers and further capital. The Chesterfield Gas and Water Board opposed, alleging that the district was within their authorised limits, and gave a pledge to give "a full, fair and reasonable price for the undertaking" if the Bill were rejected. They relied on the Ambleside case as a precedent. Preamble not proved. The chairman (Sir Wm. Coddington) stated that the Committee relied on the pledge given.

1896. Matlock Bath Gas.—A non-statutory company had applied to the Board of Trade for a Provisional Order. The local authority promoted a Bill to purchase compulsorily. No grievances proved as to price or otherwise, save that the local authority wished to remove the works to a better site. Preamble proved. H. C., Sir Wm. Coddington, chairman. In the House of Lords the company again opposed the Purchase Bill. The Committee (Lord Northbrook, chairman) passed the Bill. The company asked that any arbritration should be under the Lands Clauses Act, but the Committee did not accept the amendment.

1896. Driffield Gas.—The Great Driffield (Gas) Provisional Order was confirmed by 59 & 60 Vict. c. cxii. The sale of the undertaking of the Driffield Gaslight Company (non-statutory) had been agreed under the powers of the Public Health Act, 1875.

1897. Ashford Gas.—Urban district council promoted Bill to purchase compulsorily the undertaking of a non-statutory company. Ultimately the parties agreed on twenty-four years' purchase, it being left to an arbitrator to fix the maintainable profit. H. C.

1897. Malvern Link Gas.—Bill of Malvern Link U. D. C. to acquire the undertaking of a non-statutory company, with whom they had agreed on terms, and who were supporting the Bill. The Great Malvern U. D. C. opposed, they having also a Bill to purchase the same undertaking. The H. L. Committee (Lord Knutsford, chairman) passed the first named Bill, and rejected the other. In 1898 the Great Malvern U. D. C. obtained an extension of their district under the powers of the Local Government Act, 1894, so as to include the Malvern Link district. They thus succeeded to the powers of the Malvern Link Council, and carried out the purchase.

1897. Stirling Gas.—The Stirling Corporation promoted a Purchase Bill to acquire the undertaking of a non-statutory company. The company had agreed to sell, and the price had provisionally been ascertained at £62,697. On the opposition of owners and occupiers (who under the Bill would be liable to a contingent guarantee rate) the Bill was thrown out by the H. L. Committee (Lord Hawkesbury, chairman).

1898. Whitwick and Coalville Gas. — A non-statutory company promoted a Bill for statutory powers and further capital. The urban district council opposed, and asked for a purchase clause. They alleged no complaints. Purchase clause inserted. H. C., Sir James Kitson, chairman.

1898. Stirling Gas. — A non-statutory company had lighted the town for fifty years, and they now sought statutory powers. See *supra*, the proceedings in 1897. No action had been taken since then by the corporation to acquire the undertaking. Corporation now opposed the Bill, and also sought a six months' suspensory clause to enable them to purchase under the powers of the Burghs Gas Supply (Scotland) Act, 1876. The H. L. Committee (Duke of Richmond, chairman), allowed the Bill to proceed without the suspensory clause. Before the H. C. Committee (Col. Gunter, chairman) the preamble was proved.

1898. **Yeovil Gas.**—A non-statutory company promoted a Bill for statutory powers, and conversion and increase of capital. The corporation also promoted a Bill for additional powers with regard to their waterworks, and thereby also sought to acquire compulsorily the gas undertaking. No complaints. They relied for precedents on the Matlock Bath, Cowes, and Whitwick cases. Company's Bill rejected. The corporation Bill passed with purchase clause. H. L., Lord Lauderdale, chairman. The purchase section in the Yeovil Corporation Act, 1898, provided for arbitration under Lands Clauses Act ; excess works and plant ; payment by corporation of company's costs in present session, including cost of opposing corporation Bill ; compensation to officers (14 years) ; payment by corporation of costs incident to transfer and winding up.

1898. **Frodingham Gas.**—A non-statutory company promoted a Bill for statutory powers. The Urban District Councils of Scunthorpe and Frodingham respectively opposed, desiring to set up works of their own. Before the Committee the parties came to an agreement. Part of the terms was the introduction of a Purchase Bill in the next session. H. C., Mr. A. H. Brown, chairman. See, further, Scunthorpe, 1899, *infra*.

1899. **Brigg Gas.**—A non-statutory company applied to the Board of Trade for a Provisional Order. The local authority promoted a Bill for compulsory purchase of the undertaking. In the course of the case the company withdrew their opposition to the Purchase Bill on terms arranged. H. C., Sir John Brunner, chairman.

1899. **Scunthorpe Gas and Water.**—The Scunthorpe U. D. C. promoted this Bill in pursuance of the arrangement come to in 1898, and the Bill sought to acquire the undertaking of the non-statutory company above referred to. (See 1898, Frodingham Gas.) It was opposed by the Frodingham U. D. C., who were at present supplied by the non-statutory company. The promoters offered a clause, which was accepted, to enable the Frodingham U. D. C. to purchase from the promoters the mains and pipes in their district without allowing anything for goodwill. H. C., Sir John Brunner, chairman.

1899. **Newtown Gas.**—A non-statutory company promoted a Provisional Order for statutory powers and additional capital. The urban district council opposed before the Board of Trade, asking unsuccessfully for the introduction of a purchase clause. Before the Committee on the confirming Bill they again appeared in opposition, when a purchase clause was granted by the Committee. H. L., Lord Camperdown, chairman. In 1900 the Purchase Bill was introduced and passed.

1900. **Portland Gas.**—A non-statutory gas company having gone into liquidation, the Urban District Council of Portland entered into an agreement with the liquidator for the sale and transfer of the undertaking to the council, and this was carried out by the Portland U. D. C. Gas, etc. Act, 1900.

1901. Petersfield and Selsey Gas.—By this Bill it was proposed to incorporate a company to acquire the undertakings of two non-statutory companies. It was opposed by the Petersfield U. D. C., who sought a purchase clause. This was inserted by agreement. H. C., Mr. Harwood, chairman.

1901. Mansfield Gas.—The Corporation of Mansfield had the gas supply in their own hands. They afforded a supply in bulk to a non-statutory company, which retailed it in Mansfield-Woodhouse. The corporation by this Bill sought to acquire this undertaking compulsorily. The Bill passed by agreement.

1901. Golborne Gas.—Bill promoted by a non-statutory company for parliamentary authority, and to repeal certain powers of the Leigh Corporation to supply gas in the district of Golborne. The Committee passed the preamble. H. C., Mr. Caine, chairman. In the House of Lords the Bill was again allowed to proceed, the Leigh Corporation getting authority to remove any pipes they had laid but getting no compensation for the laying of them. Lord Hatherton, chairman.

1901. Omagh Gas.—Bill to re-incorporate a non-statutory company and confer statutory powers. It was opposed by the Omagh U. D. C., who sought a purchase clause. The Committee found the preamble proved and gave a three years' purchase clause. H. L., Lord Newton, chairman. In the Session of 1902 a Purchase Bill was introduced by the Omagh U. D. C., and was passed into law.

1901. Swaffham Gas.—A non-statutory company having applied to the Board of Trade for a Provisional Order for further capital, the urban district council opposed and obtained the insertion by agreement of a two years' purchase clause. No purchase was effected in this case.

1901. Winsford Gas.—The Over and Wharton Gas Co., Ltd., were supplying gas to the town of Winsford. They resolved to wind up the company voluntarily, and the liquidators agreed to sell the undertaking to the Winsford Urban District Council. The transaction was carried out by the Winsford Urban District (Gas Transfer, etc.) Act, 1901.

1902. Chard Gas.—A non-statutory company came to Parliament for statutory powers and for further capital and the introduction of the sliding scale. The Chard Corporation opposed. The H. C. Committee (Mr. Fison, chairman) passed the preamble and granted a purchase clause limited to the ensuing session of Parliament, and the Committee required the insertion of a provision against the raising of more than £6,000 of capital before January 1st, 1904. A Purchase Bill was introduced and passed in the Session of 1903.

1902. Whitstable Water and Improvement.—The Urban District Council of Whitstable promoted a Bill to purchase the undertakings of a water company and a gas company—both of them non-statutory. There was no opposition. Failing agreement, the price was to be determined by arbitration under the Lands Clauses Acts.

1902. Syston and Thurmaston Gas.—A non-statutory company had been supplying gas in Syston and Thurmaston. They promoted a Provisional Order to obtain statutory powers, further capital, etc. The Thurmaston Urban District Council opposed the confirming Bill, and desired either that Thurmaston should be left out of the Order or that they should get a purchase clause as to that portion, their ultimate desire being to obtain a supply from the neighbouring town of Leicester, where gas was being supplied at 2*s.* as against 3*s.* 6*d.* charged in Thurmaston. The Committee of the House of Lords (Earl of Erne, chairman) passed the confirming Bill without a purchase clause. It may be mentioned that the Provisional Order contained a clause (s. 6) providing for the cesser of the powers of the undertakers as to Thurmaston in case the urban district council could satisfy the Board of Trade that the undertakers failed to afford an adequate supply.

1902. Glasgow Gas.—By the Glasgow Corporation (Gas, etc.) Provisional Order, 1902, confirmed by 2 Edw. 7, c. clxxxv., the Glasgow Corporation purchased for an agreed price the undertaking of the Milngavie Gaslight Co. (non-statutory).

1903. Shepshed Gas.—By the Shepshed Urban District Council Gas Act, 1903, the transfer was authorised by agreement of a non-statutory company on arbitration terms under the Lands Clauses Acts.

1903. Chard Gas.—See 1902, Chard Gas, *supra.*

1903. Nantwich Gas.—By the Nantwich U. D. C. Act the council were empowered to acquire the undertaking of the Nantwich Gas Co., Ltd. In addition to the price of the undertaking, the council were to pay to the company £250 towards the cost of promoting the Nantwich Gas Bill, 1903, of the opposition of the company to this Act, and of winding up.

1904. Bishops Stortford and District Gas.—A limited company, established originally in 1834, and registered under the Joint-Stock Companies Acts in 1871, promoted a Bill for incorporation as a statutory company. They were opposed by the Bishops Stortford Urban District Council. In the result a compromise was arrived at, a purchase clause being inserted (s. 76). Mr. Tennant, chairman.

1904. Chippenham Gas.—A non-statutory gas company promoted a Bill for re-incorporation as a statutory company and for further powers. The company were not unwilling to sell and the local authority were willing to purchase. The Committee on the Bill adjourned the proceedings for the parties to prepare a purchase clause. On resuming, the company proposed a purchase clause in the usual terms, and the corporation proposed a clause which was described as an "old iron clause." The Committee preferred the former. See s. 89. Mr. Fison, chairman.

1904. Wellington (Somerset) Gas.—This was a Bill promoted by a limited company for re-incorporation and for further powers. A purchase clause was inserted (s. 77) by agreement with the corporation, and the Bill passed unopposed.

1904. Doncaster Corporation.—In the year 1827 a non-statutory company was formed for the supply of Doncaster, consisting of the corporation and certain individuals. Afterwards the whole concern became vested in the corporation, who, down to the time of the promotion of the Bill, supplied their district with gas and also certain outlying districts. The Bill sought for statutory powers and further capital. On the petition of the local authorities of the two outside districts—Balby-with-Hexthorpe and Wheatley—a purchase clause was inserted in their favour in respect of mains and plant in their districts, with a provision for compensation during the time any part of their plant may remain idle in consequence of the purchase.

1904. Appleby Corporation Gas.—A non-statutory gas company having agreed to sell their undertaking to the local authority, a Bill was promoted by the corporation to authorise the transfer, and for various additional powers (s. 4).

1904. Shipley U. D. C. Act.—By this Act an agreement for the purchase of a non-statutory company was confirmed, and various additional powers obtained.

1905. Hitchin Gas.—Bill promoted by a non-statutory company to obtain statutory powers. The urban district council opposed and asked for the insertion of a purchase clause. A Committee of the House of Commons (Mr. Agg Gardner, chairman) refused to insert such a clause. This case is a notable exception to the general practice of Committees, as illustrated in what precedes. The company had an excellent record for economy and good management. Their share capital was only £7,000, and they had, instead of raising further capital, borrowed money for capital purposes (in all £14,000) from time to time at a fairly low rate of interest. They had also expended divisible profit upon capital purposes. In consequence, the structural value of the works was said to be £32,000, and it was stated that the urban district council had offered £33,000, whereas, if the concern were purchased on the footing of £700 a year maintainable profits, with a multiplier of, say, twenty-five years, that would only give £17,500. There were no complaints, and the price was 3*s.* to ordinary consumers and 2*s.* 5*d.* to the local authority for public purposes. J. G. L., April 4th, 1905, pp. 14, 19, 38.

In the House of Lords the urban district council again opposed the Bill, and sought for the insertion of a purchase clause. The Committee (Lord Newton, chairman) allowed the Bill to proceed, subject to the insertion of a purchase clause. J. G. L., May 30th, 1905, pp. 586–8. See s. 71 of the Act (5 Edw. 7, c. cxxxi.).

1906. Dowlais Gas.—This Act dissolved the Dowlais Gas and Coke Co., Ltd., a non-statutory company, and re-incorporated the company with powers to manufacture and supply gas. The Bill was opposed by the Merthyr Tydfil Corporation. By agreement a purchase clause in the Hitchin form was inserted, without the provision making it an absolute direction to the arbitrator to allow 10 per cent.

1906. Truro Gas.—By this Act a limited company was dissolved and re-incorporated with additional powers. A purchase clause was inserted by agreement with the corporation, entitling them to apply for power to purchase without opposition from the company within seven years. Compensation for officers and servants is provided for. The clause as agreed included a provision that the corporation should take over the "liabilities, mortgages, and other obligations." These included a sum of £8,000 irredeemable stock. The Local Government Board raised objections to this, and the provision was struck out by the Unopposed Committee of the House of Lords.

1906. Wolstanton Urban District Gas.—An agreement to purchase the undertaking of the Chesterton Gas Co., Ltd. (a non-statutory undertaking), was confirmed by this Act.

1907. Bude Gas.—A new company was incorporated by this Act with power to construct works and supply gas. A purchase clause, operative for twenty-one years, was inserted by agreement with the local authority.

1907. Llandrindod Wells Gas.—A new company was incorporated by this Act with power to construct works and supply gas. A clause was inserted by agreement providing for the purchase of the works if within six months after the expiration of a period of twenty-one years from the passing of the Act the council serve notice on the company.

1908. Ammanford Gas.—A company was incorporated by this Act with power to purchase by arbitration the works of the Amman Valley Gas Co., Ltd. Power is given to the urban district council to purchase the undertakings after twenty-one years, without opposition from the company.

1908. Blackwood Gas.—By agreement, a purchase clause was inserted in favour of the local authority, operative in twelve months after the expiration of twenty years from the passing of the Act.

1909. Lisburn Urban District Council.—The Lisburn Gas Co. and the Lisburn Urban District Council both promoted Bills, the former seeking to be re-incorporated, the latter to obtain power to purchase the company's undertaking. By agreement, the company withdrew their Bill and allowed the council's measure to proceed unopposed.

SCHEDULE B.

PURCHASE BY LOCAL AUTHORITIES OF THE UNDERTAKINGS OF STATUTORY GAS COMPANIES.

1877. Waterford Gas.—Bill promoted by a statutory company for additional powers and further capital. In the second House, after the Committee had decided to allow the Bill to proceed, the corporation brought up a ten years' purchase clause. The promoters opposed the clause "on the ground of its being compulsory." The Committee accepted the clause, inserting three years instead of ten. H. L., Viscount Sidmouth, chairman.

1887. Pudsey Gas.—A statutory company promoted a Bill for new capital. Within their limits were two districts that had since been added to Bradford. Bradford opposed, and said they were willing to purchase, but asked that the Bill might be rejected. Preamble proved. H. C., Mr. Giles, chairman.

1888. Swansea Gas.—Bill promoted by a statutory company for additional capital. The corporation opposed and asked for a purchase clause. The Committee refused. H. C., Mr. (now the Right Hon.) James W. Lowther, chairman.

1890. Ystrad Gas and Water.—Statutory company with Bill for further works. Local authority opposed, asking purchase clause. Agreement come to before the Committee. H. L.

1890. Derby Gas.—Statutory company—Bill for new works and capital. Corporation opposed. Purchase clause refused. H. C., Right Hon. James Lowther, chairman.

1891. Stourbridge Gas and Water.—Bill by Stourbridge Improvement Commissioners to purchase both undertakings compulsorily. Both companies statutory. Terms agreed as to gas. As to water, Committee refused purchase clause. H. C., Sir William Houldsworth, chairman.

1891. Salford Corporation Gas.—The corporation, having parliamentary powers, promoted a Bill for additional capital, etc. Outlying local boards supplied opposed, and asked for power to purchase their portions of undertaking. Purchase clause granted. H. C., Mr. Mount, chairman.

1892. Southend Gas.—Statutory company promoted Bill for further capital, etc. Local board opposed, asking for a purchase clause. Refused. H. C., Mr. Herbert Gladstone (now Lord Gladstone), chairman.

1892. Ilkley Gas.—The local board promoted Bill to acquire the undertaking of the Ilkley Gas Co., which was statutory. Complaints were alleged as to the method of the accounts. The House of Commons Committee (Sir Francis Sharp Powell, chairman), passed the preamble. Owing to the dissolution of Parliament in 1892, the Bill was suspended till the session of 1893. It then came before a Committee of the House of Lords, when counsel announced a settlement.

1893. Accrington Gas and Water.—Statutory company promoted Bill for additional works and capital. The Corporation of Accrington opposed, asking for a purchase clause. The Committee of the House of Lords allowed the Bill to proceed without a purchase clause. Before the House of Commons Committee a purchase clause was inserted by agreement of parties.

1893. Barry and Cadoxton Gas and Water.—The local board promoted a Bill to acquire compulsorily the undertaking of the gas and water company, which was statutory. On the morning of the second day counsel announced a settlement.

1893. Pontypridd Gas.—The Pontypridd Local Board (Gas) Act, 1893 (56 & 57 Vict. c. c.), authorised the purchase of the undertaking of the Pontypridd Gas Light and Coke Co. (statutory) upon terms contained in an agreement scheduled to the Act.

1893. Barnoldswick Gas.—The Barnoldswick Local Board Gas Act, 1893 (56 & 57 Vict. c. clvii.), authorised the purchase of the undertaking of the Barnoldswick Gas and Light Co. (statutory) upon terms contained in an agreement scheduled to the Act.

1895. Ilfracombe Gas.—Statutory company promoted Bill for new works and further capital. Local authority opposed and asked for a purchase clause. The Bill contained other controversial matter such as the removal of the gasworks and the construction of a pier with harbour jurisdiction. Bill rejected. H. L., Viscount Hampden, chairman.

1895. North Middlesex Gas.—Statutory company promoted Bill for additional works and capital. The company supplied the districts of several local authorities. One of these (Hendon District Council) opposed, and asked for a purchase clause. Company replied that joint board would have to be formed. Purchase clause refused. H. C., Sir James Kitson, chairman.

1895. Chesterfield Gas and Water.—In 1894 a statutory company promoted a Bill for additional capital and increase of water rate. The Chesterfield Corporation opposed, making complaints mainly in regard to water, and asking that the Bill might be rejected to enable them to come with a Purchase Bill. Company's Bill rejected, the Committee intimating that in the event of a purchase both the gas and the water should be acquired. In 1895 a Bill was promoted for the formation of a joint board and the purchase of the gas and water undertakings. Before the Committee the main point discussed regarding the purchase was whether the arbitration should be under the Lands Clauses Act, 1845, or under the Public Health Act, 1875. The Committee, following the general rule, decided in favour of the Lands Clauses Act. H. L., Earl of Jersey, chairman.

1895. Hebden Bridge and Mytholmroyd Gas.—This was a Bill promoted by local authorities to purchase the undertaking of a statutory gas company, and to form a joint board. The terms of purchase had been agreed beforehand, and the Bill was unopposed.

1896. Norwich Gas.—The British Gaslight Co., a statutory company, promoted a Bill for further capital in respect of their Norwich station. Corporation opposed and asked a purchase clause. The Bill was allowed to proceed. No purchase clause. H. L., Lord Poltimore, chairman.

1896. Leamington Gas.—Bill of Leamington Corporation for various purposes, including power to purchase undertaking of a statutory gas company. Before the Committee it was opened that this part of the Bill had been agreed.

1896. Ystradyfodwg Gas and Water.—The Ystradyfodwg U. D. C. (Gas and Water) Act, 1896 (59 & 60 Vict. c. lxxi.), s. 6, authorised the purchase by the council of the statutory gas and water undertakings of the Ystradyfodwg Gas and Water Co., and failing agreement, provided for arbitration to ascertain the price.

1897. Lowestoft Gas and Water.—Corporation Bill for compulsory purchase of the Lowestoft Water, Gas and Market Co. (statutory). The promoters said they would not have asked for the gas but for the water. The corporation complained of the water, but offered no new supply. The H. L. Committee (Lord Poltimore, chairman) rejected the Bill.

1897. St. Anne's-on-Sea Gas.—Local authority promoted a Bill for compulsory purchase of a statutory gas undertaking. A Committee of the House of Lords (Lord Poltimore, chairman) passed the Bill, a clause being inserted to insure a "fair and full value being paid." In the other House (Col. Gunter, chairman) the preamble was not proved.

1897. Weymouth Gas.—A statutory company promoted a Bill for extension of limits and additional capital. Corporation opposed and sought purchase clause. Clause refused. H. C. Committee, Mr. Jeffreys, chairman.

1897. Kingston-upon-Hull Gas.—The Kingston-upon-Hull Corporation Act, 1897 (60 & 61 Vict. c. ccxlix.), authorised the purchase of the undertaking of the Kingston-upon-Hull Gaslight Co. (statutory) upon terms of an agreement, scheduled.

1898. Aberystwith Gas.—A statutory company promoted a Bill for new works and additional capital. By arrangement a purchase clause was inserted. A difference arose as to whether the arbitration should be under the Lands Clauses Act, 1845, or the Arbitration Act, 1889, and the H. L. Committee (Lord Lauderdale, chairman) decided for the latter.

1898. Redhill and Reigate Gas.—The Redhill Gas Co. (statutory) promoted a Bill to acquire by agreement the undertaking of the Reigate Gas Co., Limited (also statutory), and for further capital. The Reigate Corporation opposed, and sought a purchase clause. The H. L. Committee (Lord Lauderdale, chairman) granted a purchase clause. Promoters asked for time to consider, and on the Bill coming again before the Committee it was withdrawn.

1898. Morley Gas.—A statutory company promoted a Bill to include the district of Chirwell, and to acquire the undertaking of the Chirwell Gas Co. (non-statutory). The corporation also promoted a Bill by which they sought to acquire compulsorily the Morley Gas Undertaking. There were complaints of quality, and in connection with the accounts.

The corporation relied for precedents on the Ilkley, Ystrad, and Redhill and Reigate cases. Corporation Bill proceeded. Company's Bill rejected. The purchase clause provided for arbitration under the Lands Clauses Act "with reference to the purchase and taking of land otherwise than by agreement," the gas company to be entitled out of cash in hand to pay their costs in opposing the Purchase Bill, and of promoting their own Bill (subject to taxation if desired by the corporation as between solicitor and client), the corporation paying costs of winding-up and compensation to officers. H. L., Lord Rookwood, chairman.

1898. **Rhymney and Aber Valleys Gas and Water.**—An undertaking was authorised for supplying with gas and water a number of districts in the county of Monmouth and in the county of Glamorgan. Portions of those parishes were supplied by a statutory company authorised in 1892. An agreement was come to between the parties which was scheduled to the Act.

1898. **Hartlepool Gas and Water.**—A statutory company promoted a Bill for further reservoirs, and additional capital to meet increased demand for soft water for trade purposes. The corporation opposed, and were allowed to go into the question of gas as well as water. They sought a purchase clause as to both gas and water. Preamble proved. No purchase clause. H. C., Sir James Kitson, chairman.

1898. **Filey Gas and Water.**—Bill promoted by the urban district council to acquire compulsorily the undertaking of a statutory company, There had been negotiations extending back many years. The promoters asserted that the company were opposing in order that the purchase might be considered compulsory under the Lands Clauses Act. For the company it was urged that there being no complaints there was no precedent. Preamble proved. H. L., Earl of Kintore, chairman.

1899. **Ilford Gas.**—A statutory company promoted a Bill for further capital. The urban district council promoted a Bill for compulsory purchase of the undertaking. Preamble of company's Bill proved. Preamble of Purchase Bill not proved. H. C., Mr. Schwann, chairman.

1899. **Lea Bridge Gas.**—A statutory company promoted a Bill for further capital. The local authorities of Walthamstow and Leyton opposed and asked for a purchase clause. Preamble proved. No purchase clause. H. L., Lord Camperdown, chairman. Before the Committee of the other House (Sir Wm. Houldsworth, chairman) the opposition was renewed. The Committee found the preamble proved, and did not insert any purchase clause.

1899. **Skipton Gas.**—A statutory company promoted a Bill for further capital. The urban district council also promoted a Bill to acquire the undertaking compulsorily. They called much local evidence as to bad quality and complaints. It was announced to the Committee that an agreement had been arrived at. Purchase clause inserted, which specially provided for an allowance of 10 per cent. for compulsory purchase. H. L., Lord Wenlock, chairman.

1899. **Loughborough Gas.**—A statutory company promoted a Bill for additional capital. The corporation promoted a Bill to acquire the undertaking compulsorily. There had been complaints. The

Morley case was relied on for the corporation. The company replied that the Morley Company were practically willing sellers. Company's Bill rejected and corporation's Bill proceeded. H. L., Lord Ribblesdale, chairman. The Bill was not opposed in the second House.

1899. Bradford Gas.—The corporation promoted a Bill to acquire so much of the Shipley and Pudsey Gas Companies as lay within the extended boundaries of the borough. The corporation had the gas supply in the unextended borough in their own hands. The borough had been extended previously in 1881, and then the position of these outside gas companies had been protected by clauses. Now that the borough had been further extended the consequence was that the charge for gas was not the same throughout the extended borough. The company complained that the taking of part of their undertaking would make it more expensive for them to supply the rest of their district. The Committee suggested a compromise; but the companies refused to entertain any proposal, and went on with their case. The corporation having relied on the Morley case, the opponents replied through a witness that that case was practically a case of agreement. (See the Loughborough case, *supra.*) Preamble not proved. H. C., Mr. Molloy, chairman. See 1900, Bradford Gas, *post*, p. 122.

1900. Glyncorrwg Gas.—By the Llynvi Gas Act, 1868, a company was incorporated to supply gas within an area which included the urban district of Glyncorrwg, in the county of Glamorgan. By agreement, the urban district council of Glyncorrwg purchased that portion of the undertaking which lay within their district, and the transaction was carried out by the Glyncorrwg Urban District Council Gas Act, 1900.

1900. Ossett Gas.—A statutory company promoted a Bill for additional capital and other purposes. The corporation also promoted a Bill for compulsory purchase. In the course of the second day's hearing the parties came to terms, which were announced, including arbitration under the Lands Clauses Act.

1900. Morecambe Gas.—The Morecambe U. D. C. promoted a Bill to acquire the undertaking of a statutory company, the limits of which embraced certain outside places including Heysham. Terms had been agreed with the company. The Bill contained a clause to authorise the sale to outside authorities of their portion of the "undertaking." Heysham opposed, objecting to the use of that word, and alleging that the agreed price was excessive. The H. C. Committee found preamble proved. (Sir T. Gibson Carmichael, chairman.) The H. L. Committee also allowed the Bill to proceed with the clause as proposed. (Earl of Erne, chairman.) See 1899, Stockport Water, *post*, p. 137, and see also *ante*, p. 37.

1900. Glastonbury Gas.—Bill to authorise the corporation to acquire the undertaking of a statutory gas company. Terms had been agreed, including arbitration under the Lands Clauses Act. The only opposition was from the Urban District Council of Street, which was supplied by the company. The Bill contained a clause authorising outside districts to purchase their portion of the "undertaking, and works, mains, and plant." Preamble proved, H. C., Mr. Schwann chairman. The Committee inserted a clause providing for a separate sinking fund for Glastonbury and Street respectively in case Street should purchase its portion; and surplus revenue was directed to go in reduction of price, subject to a power to carry to the district fund 1 per cent. per annum in respect of capital expended.

1900. Hartlepool Gas and Water.—A statutory company promoted a Bill for £200,000 additional capital earmarked for the gas portion of the undertaking and also for conversion of stock. The corporation opposed and asked for a purchase clause. Company contended no complaints, and relied on decision of Sir James Kitson's Committee in 1898. See *ante*, p. 120. Preamble proved. New capital fixed at £150,000. H. C., Sir T. Gibson Carmichael, chairman.

1900. Cleethorpes Gas.—A statutory company promoted a Bill for additional capital, conversion of present capital and sliding scale. The local authority opposed, but terms were arranged which did not include purchase.

1900. Wolverhampton Gas.—A statutory gas company having promoted a Bill for additional capital, etc., the corporation petitioned. Terms were arranged between the parties, including a purchase clause enabling the corporation to come for a Purchase Bill in the next or the following session of Parliament, if they should so desire.

1900. Bradford Gas.—The corporation, under the Local Government Act, 1894, obtained a considerable extension of boundaries embracing districts now supplied by four statutory companies. Pleading the desirability of uniformity of price and illuminating power to the citizens of Bradford, the corporation now promoted a Bill to acquire the several undertakings compulsorily. The following instances were mentioned in the course of the case as precedents for the compulsory acquisition of a statutory gas company: Ilkley, Chesterfield, Skipton, Stourbridge, and Morley. As regards the North Bierley Gas Company an agreement was arrived at, but as regards the others the Committee declared the preamble not proved. H. C., Lord E. Fitzmaurice, chairman. See 1899, Bradford Gas, *ante*, p. 121.

1901. Poulton-le-Fylde Gas.—A Bill by the local authority to purchase the undertaking of a statutory company. The Provisional Order of the company of 1888 contained a purchase clause. Terms of purchase were agreed.

1901. Heckmondwike Gas.—The Bill proposed to constitute a joint gas board for the urban districts of Heckmondwike and Liversedge, and to acquire compulsorily the statutory undertaking of the Heckmondwike Gas Company. The company opposed. The promoters attempted to prove complaints. Preamble not proved. H. C., Mr. Schwann, chairman.

1901. Hartlepools Gas and Water.—The Corporations of Hartlepool and West Hartlepool promoted a Bill to acquire compulsorily the statutory undertaking of the Hartlepool Gas and Water Company. In opening, the counsel for the corporation said "he did not know that any great fault was to be found with the company, and he would take it therefore that their gas and water were fairly good in quality and quantity and below the maximum price." The case for the Bill was therefore based on public policy. Preamble not proved. H. C., Mr. Schwann, chairman.

1901. Colwyn Bay Gas.—This Bill was promoted by the Colwyn and Colwyn Bay U. D. C., and it sought to acquire compulsorily the undertaking of a statutory company. In 1896, however, the local authority had obtained the insertion of a five years' purchase clause in the company's special Act of that year. In 1899 they attempted to carry out this purchase by a Provisional Order. This had to be dropped, because although the Local Government Board were favourable to purchase, the limits of the company were not confined to the district of the local authority. Terms were arranged, including arbitration under the Lands Clauses Act, and allowance for any excess of works and plant.

1901. Devonport Gas.—A statutory company promoted a Bill for further capital and powers. The corporation promoted a Bill to acquire the undertaking compulsorily. Complaints were made of the gas. Terms were agreed to and a purchase clause inserted. H. C., Mr. F. W. Fison, chairman.

1901. Weston-Super-Mare Gas.—By this Bill the local authority sought to acquire the undertaking of a statutory company. Terms had been agreed.

1901. Bingley Gas.—The Bingley U. D. C. having gas supply in their own hands afforded a supply in bulk to a company with statutory powers, which retailed it in Cullingworth. Their district was extended to include the district supplied by the company. By this Bill they sought to acquire compulsorily the undertaking of the company. Before the Committee the contest did not turn upon purchase or no purchase, but on the question of terms of purchase. The Bill passed with a purchase clause. H. C., Mr. Heywood-Johnstone, chairman.

1901. Long Eaton Gas.—A statutory company promoted a Bill for further powers. The local authority opposed and sought to purchase. Before the Committee the terms of a purchase clause were agreed to. It included arbitration under the Lands Clauses Act, and 10 per cent. for compulsory purchase. H. C., Colonel Welby, chairman.

1901. Elland Gas.—Bill promoted by a statutory company for consolidation of existing capital and for additional capital. The Elland U. D. C. opposed and asked for a purchase clause. The district of the company extended beyond their area. It was contended on their behalf that the Committee should limit the amount which might be expended on capital during the next twelve months to enable Elland and the adjoining districts to come to Parliament with a Purchase Bill. Bill allowed to proceed. H. L., Lord Pirbright, chairman.

1901. Honley Gas.—By the Honley Urban District Council Gas Act 1901, the council were authorised to carry out an agreement for the purchase of the undertaking of a limited company authorised by Provisional Order.

1901. Shipley Gas.—The Shipley district was being supplied by gas by a statutory company who entered into an agreement with the council for the sale and purchase of the undertaking. This Act authorised the agreement, and made provisions for carrying out the purchase. The urban district of Baildon was within the limits of the Shipley Company, and the Corporation of Bradford had in Parliament in the same session a Bill for extension to include Baildon. They petitioned against the Shipley Bill, but before the Police and Sanitary Committee the extension to Baildon was struck out of the corporation's Bill. The Shipley Act contained the usual clause, "Sale of portion of undertaking to outside authorities."

1902. Abercarn Gas.—The Abercarn and Newbridge Gas and Water Co. had been incorporated in 1884, but had never exercised their water powers. The Abercarn U. D. C. now promoted a Bill for purchase of their gas undertaking and other powers under the Act of 1884. After the Bill had been opened in Committee of House of Commons (Mr. W. S. Caine, chairman), an arrangement was come to and a price agreed.

1902. Bradford Corporation.—By an Omnibus Act the Bradford Corporation obtained power, *inter alia*, to purchase three statutory gas companies, viz., the Clayton Allerton and Thornton Gas Co., the Airedale (Idle) Gas Co., and the Eccleshill and Bolton Gas Co. All of them supplied gas partly within and partly without the city. Agreements had been come to beforehand, and the Bill in this respect was unopposed. The usual clause was inserted for sale to outside local authorities of their portion of the undertaking (s. 72).

1902. Leamington Corporation.—See 1896, Leamington Gas, *ante*, p. 119. In pursuance of the power to purchase given by the Act of 1896, the Leamington Corporation later on gave the necessary notice to purchase. In the Session of 1902 they had an Omnibus Bill in which was contained a clause repealing the purchase clause in the Act of 1896, and declaring the notice to purchase null and void. This clause was not opposed by the gas company. As the counsel for the corporation explained before the Police and Sanitary Committee (Mr. Heywood Johnstone, chairman), the corporation had given the notice at a time when they expected they could borrow the necessary money at the rate of 2¾ per cent., which would have made it possible for them to have carried on the works without recourse to the rates; but they had found that they would have to pay from 3¼ to 3½ per cent., and would therefore have to resort to the rates. Hence their determination to give up the idea of purchasing. The Bill passed with the clause (s. 60).

1902. Rickmansworth Gas.—A statutory company promoted a Bill for further capital. The urban district council presented a petition against the Bill in the House of Lords, but, not having complied with the Borough Funds Act, they were stopped by injunction from expending the ratepayers' money in opposing the Bill. When the Bill came to the second House, the urban district council, having complied with the Borough Funds Act, opposed the Bill, objecting to the proposed increase of capital, and seeking a purchase clause. The Chairman (Sir John Brunner) suggested that the parties should come to an agreement, and in the result an agreement was arrived at as to capital and otherwise, and a purchase clause was inserted. In the session of 1903 a Purchase Bill was introduced by the urban district council. It was opposed by the gas company, who sought for, and ultimately obtained by agreement, the insertion of the following clause:

"18. *Cancellation of Sale on Failure to Complete.*—If the purchase of the undertaking of the company under the provisions of this Act is not completed and the purchase-money paid within five months after the determination of the amount of the said purchase-money, the company may, if they think fit, by notice in writing to the council, declare the sale to be cancelled, and thereupon the provisions of this Act with respect to the sale and transfer of the said undertaking shall become of no effect, but all costs, charges, and expenses incurred by the company with respect to the said sale and transfer, and with respect to the ascertainment of the amount of the purchase-money, as well as the costs, charges, and expenses of obtaining the Rickmansworth Gas Act, 1902, shall in such case be paid by the council."

1902. Broadstairs Gas.—A statutory company promoted a Bill for further works, a new site, and additional capital. The Urban District Council of Broadstairs and St. Peter's opposed the Bill, their main objection being to the proposed site. There were no complaints against the company. The urban district council contended primarily that the site should be rejected, and in the second place that, if the Committee passed the site, they should suspend the power to acquire it for one year to enable the council to come for a Purchase Bill. In the House of Commons the Committee (Sir Savile Crossley, chairman) passed the preamble, with the qualification that no gasholder should be more than 20 feet above the soil. In the House of Lords (Lord Hawkesbury, chairman) the urban district council presented similar contentions, and in the result the Committee decided to strike out the site clause altogether.

1902. Longwood Gas.—A statutory company promoted a Bill for conversion, further capital, and sliding scale. The limits of the company included, amongst other places, Lindley and Longwood. A part of Lindley was supplied by the Corporation of Huddersfield, and in their Act of 1875 the company, by agreement, inserted a clause to the effect that the price to be charged by them in the part of Lindley which they supplied, should not exceed the charge made by the corporation in the portion which the corporation supplied. Afterwards the corporation extended their limits so as to include the whole of Longwood. They now opposed the company's Bill, and sought either that the arrangement in regard to Lindley should be applied to Longwood, or that they should be allowed to purchase the portion of the company's undertaking lying within the limits of Huddersfield. Both these proposals were rejected by the committee. H. L., L. Stanmore, chairman. In the House of Commons the corporation again petitioned, but a compromise was come to.

1903. Rickmansworth Gas.—See 1902, Rickmansworth Gas, *ante.*

1903. Bradford Gas.—By the Bradford Corporation Act, 1903, the corporation of Bradford were authorised to acquire for an agreed sum that portion of the gas undertaking, works, mains, and plant of the Shipley U. D. C. as is contained within Bradford, and the Shipley Council were also authorised to acquire for an agreed sum that portion of the gas undertaking, works, and plant of the corporation as is contained within the district of the Shipley Council.

1903. Bridgwater Gas.—This Bill was promoted by a statutory company incorporated by an Act of 4 Will. 4, but which had not since been in Parliament. By agreement a clause was inserted, providing that the corporation may within twenty years promote a transfer Bill without opposition from the company.

1904. Matlock and District Gas.—Promoted by the Matlock and District Gas Company, which was a statutory company, for further capital, reduction of illuminating power, etc. The Bill was opposed by the Matlock Bath U. D. C., who had statutory power to supply gas, and they desired the insertion of a purchase clause to enable them to acquire compulsorily that part of the promoters' district of supply which lay within the district of the council. It appeared that in 1896 the Matlock Bath Council obtained power to purchase their present undertaking, and a clause was inserted in the Bill to the effect that the area in question should be supplied by the promoters and should not be taken away from them without their consent in writing. The Committee (Lord Barnard, chairman) refused to insert a purchase clause.

1904. Bognor Gas.—Provisional Order promoted by a statutory gas company for further works, further capital, and extension of limits. Opposed by the Bognor U. D. C., who, *inter alia*, sought a purchase clause. The Committee (Earl of Dartrey, chairman) found the preamble proved and gave no purchase clause.

1904. Whitby Gas.—A statutory gas company having promoted a Bill for further capital and the introduction of the sliding scale, a purchase clause in favour of the local authority was, by consent, inserted in the Act (s. 47).

1904. Kirkby-in-Ashfield U. D. C. Gas.—Following upon a re-arrangement of districts, this local authority was authorised to purchase so much of the undertaking authorised by the Sutton-in-Ashfield Local Board Gas Act, 1878, as lay within their district (ss. 3 and 5). The Bill was unopposed. By s. 35 the powers, theretofore unexercised, of a statutory gas company to supply this district were repealed.

1904. Harlow and Sawbridgeworth Gas.—The following precedent giving the first option of purchase to a local authority occurs in the Harlow and Sawbridgeworth Gas Act, 1904, s. 54 :

"*As to Sale of Portions of Undertaking.*—The company shall not at any time agree to sell their undertaking or any part . . . thereof to any local authority, company, or person without previously offering to sell the portion of their undertaking, which is situate in the urban district of Sawbridgeworth, to the urban district council of that district upon the same terms and conditions as may be offered by the said local authority, company, or person, and in the event of the council aforesaid agreeing to purchase the same, the company shall not oppose any application that may be made to the Local Government Board or to Parliament by the council for the necessary powers."

1906. Merthyr Tydfil Gas.—The Merthyr Tydfil Gas Company by this Act were given authority to construct new or additional works, and to purchase compulsorily certain specified lands, and for other purposes. Among the petitioners against the Bill were the Merthyr Tydfil Corporation, who endeavoured to get a purchase clause inserted. This they failed to do, but a suspensory clause was inserted, which had the effect of suspending the operation of the company's new Act in order that the corporation and the company might meet and fight out the question of purchase in a Bill to be specially promoted by the corporation in the following session. Major Seely, chairman.

1906. East Hull Gas.—The Sutton, Southcoates and Drypool Gas Company obtained power by this Act to consolidate their capital, to raise additional capital, and to change their name to "East Hull Gas Company." The Kingston-upon-Hull Corporation desired a purchase clause. This they failed to obtain, but succeeded in getting a suspensory clause inserted corresponding to the clause put into the Merthyr Tydfil Act. Mr. H. J. Tennant, chairman.

In the following session (1907) the Corporation included in an Omnibus Bill a provision to enable them to purchase the undertaking of the company. The Committee of the House of Commons allowed the clause, apparently on the ground that the management of the undertaking had not been all that it might have been. The corporation sought to insert a provision to prevent the company being allowed anything for compulsory purchase, but this was not passed by the Committee. The H. L. Committee (Lord Donoughmore, chairman), however, refused to allow the section of the Bill relating to purchase to proceed.

1906. Pontefract Gas.—This Act empowered the Pontefract Corporation to compulsorily purchase the undertaking of the Pontefract Gas Company. No mismanagement on the part of the company was shown, but the power of compulsory purchase was granted apparently on the ground that the company had shown a want of enterprise. H. C., Mr. J. W. Wilson, chairman.

1908. Garw and Ogmore Gas.—By this Act the company obtained an extension of their statutory limits of supply and other powers. By agreement purchase clauses were inserted in favour of the Ogmore and Garw D. C. and the Llantrisant and Llantwit R. D. C., applying to the portions of the undertaking in their respective areas. The clauses are only operative after ten years.

1908. Gosport Gas Bill.—The Gosport Gas and Coke Company promoted a Bill for the purpose, among other things, of defining the limits of their operations, and giving power to charge differential rates in outlying parts of their district. The Gosport and Alverstoke U. D. C. opposed, and required a purchase clause. The Committee refused to insert a purchase clause.

1908. Wath and Bolton Gas Board.—The Act provides for the constitution of a gas board, and the acquisition by agreement of the undertaking of the Wath-upon-Dearne and District Gas Company, Ltd., a statutory concern. Provision is made that the Thurnscoe Local Authority may purchase the portion of the undertaking within their district if, after December 31, 1912, they give not less than six months' notice.

1908. Swinton and Mexborough Gas.—The Bill was promoted by a limited company having powers under a Provisional Order, and sought for the incorporation of the company with further powers. It was opposed by the Mexborough U. D. C., and a Committee of the House of Commons (Mr. Whitbread, chairman) granted a purchase clause on the ground of past bad management, with the condition that the Swinton and Mexborough Councils should jointly promote a Bill in the next session of Parliament.

1909. Prestatyn Urban District.—The owner of the Prestatyn Gas Undertaking (statutory) applied for a Provisional Order to authorise the expenditure of further capital and for other powers. The Prestatyn U. D. C. promoted a Bill for the purchase of the undertaking. Power to purchase compulsorily was granted.

1909. Heckmondwike and Liversedge Gas.—The Company promoted a Bill to enable them to extend their works, to convert and consolidate their capital, and for other purposes. The Heckmondwike and Liversedge U. D. C. petitioned for the insertion of a suspensory clause, which was granted.

SCHEDULE C.

PURCHASE BY LOCAL AUTHORITIES OF THE UNDERTAKINGS OF NON-STATUTORY WATER COMPANIES.

1882. Todmorden Water.—A non-statutory company promoted a Bill for statutory powers. The local board opposed, and obtained a twelve months' purchase clause, with provision for no enhancement in case of purchase. H. C., Mr. A. H. Brown, chairman.

1882. Queenstown Water.—A non-statutory company promoted a Bill for statutory powers. On the opposition of the Commissioners, a one-year purchase clause was inserted.

1885. Northwich Water.—A Purchase Bill promoted by the local board. The company, which was non-statutory, also promoted a Bill to obtain statutory powers. In the result terms were arranged, the Bill of the local board being passed. H. C., Mr. Shield, chairman.

1889. Rastrick Water.—A non-statutory company promoted a Bill for statutory powers. The local board opposed, and sought a purchase clause. A two years' purchase clause inserted. H. L., Lord Henley, chairman.

1890. Newark-upon-Trent Water.—Bill promoted by a non-statutory company. Corporation alleged they were taken by surprise, and desired to purchase. Bill rejected. H. C., Mr. A. H. Brown, chairman.

1895. Bridlington Water.—A non-statutory company promoted a Bill for statutory powers. The urban district council opposed, and sought a purchase clause. Terms were eventually arranged and the Bill passed with a purchase clause; arbitration under the Lands Clauses Act, and a no-enhancement clause for five years.

1895. Felixstowe and Walton Water.—A non-statutory company promoted a bill for statutory powers and further capital. The urban district council opposed and sought a purchase clause. Counsel for company tendered a purchase clause (with arbitration under Lands Clauses Act) which was accepted.

1898. Matlock Water.—The Matlock U. D. C. promoted a Bill to acquire by agreement the undertaking of a non-statutory water company. A provisional agreement had been come to. The opposition to the Bill was from the Derbyshire C. C. and the Matlock Bath U. D. C. Preamble proved. H. C., Sir William Houldsworth, chairman.

1899. Scunthorpe Gas and Water.—The Scunthorpe U. D. C. promoted this Bill in pursuance of the arrangement come to in 1898 (see 1898, Frodingham Gas), and the Bill sought to acquire the undertaking of the non-statutory company above referred to. It was opposed by the Frodingham U. D. C., who were at present supplied by the non-statutory company. The promoters offered a clause, which was accepted, to enable the Frodingham U. D. C. to purchase from the promoters the mains and pipes in their district without allowing anything for goodwill. H. C., Sir John Brunner, chairman.

1899. Church Stretton Water.—This Bill proposed to authorise the incorporation of a company to supply the parish of Church Stretton with water. The parish was at present supplied by three small water companies, all of them non-statutory. The promoters offered to buy them out if they so desired, and offered to insert a clause to enable the local authority to purchase. The H. L. Committee (Lord Loch, chairman) allowed the Bill to proceed, reducing the capital so as to bring the undertaking within the limits of the purchasing power of the local authority.

1900. Menstone Water.—A limited company was formed for the purpose of supplying with water the township of Menstone, in the West Riding. In 1889, the company came to Parliament for re-incorporation, further capital and works. In this Act a purchase clause was inserted in favour of the Wharfedale Rural District Council. The transaction was carried out by the Menstone Waterworks (Transfer) Act, 1900.

1901. Prestatyn Water.—The local authority promoted a Bill to acquire compulsorily the non-statutory undertaking which was in the hands of one proprietor. Terms of purchase were agreed. H. L., Lord Newton, chairman.

1902. Whitstable Water and Improvement.—The Urban District Council of Whitstable promoted a Bill to purchase the undertakings of a water company and a gas company—both of them non-statutory. There was no opposition. Failing agreement the price was to be determined by arbitration under the Lands Clauses Acts.

1904. Minehead U. D. C. Act.—This Act, which was unopposed, transferred to the Minehead U. D. C. the undertaking of the Minehead Waterworks Co., Ltd., who had no statutory powers. Section inserted fixing the amount of compensation to officers and servants.

1905. Skegness Water.—Lord Scarborough had supplied the town of Skegness with water without an Act of Parliament. He determined to provide the town with a new and better source of supply, and sought for statutory powers. The district council opposed, and asked for a purchase clause. In the result a clause was agreed upon providing for three clear years' tenure of the undertaking, and giving the council (on six months' notice after the expiry of the three years) power to purchase, The district council obtained an Act in 1908 to give effect to the purchase.

1906. New Mills Urban District Council.—The council were authorised by this Act to purchase the Ollerset Waterworks, as well as such portion of the works and plant of the Stockport Corporation as was within the area of the council. The Ollerset works were constructed under an Act of 1831, and the powers of the Act became vested in Mr. F. J. Summers, with whom the council entered into an agreement for the transfer. This agreement is confirmed by the Act.

1906. Poole Corporation Water.—The Poole Water Company promoted a Provisional Order in this session for power to construct additional works and to obtain additional water. The corporation also promoted a Bill to enable them to purchase the company's undertaking, and to carry out certain additional works. The Provisional Order was granted by the Board of Trade, and referred to the Committee to which the corporation Bill was sent. In the result the Provisional Order was withdrawn by the promoters, and the Corporation Bill passed.

1908. Criccieth Water and Improvement.—By agreement this Act authorised, *inter alia*, the acquisition by the council of a non-statutory water undertaking.

SCHEDULE D.

PURCHASE BY LOCAL AUTHORITIES OF THE UNDERTAKINGS OF STATUTORY WATER COMPANIES.

1876. Stockton and Middlesbrough Water.—In the previous year the company (statutory) had come for a Bill for more water from the Tees. The corporations opposed. They proved that the water was bad and suggested that the promoters should go to the hills for the further supply which was wanted. In the following year the company came again with the same scheme but to take less water from the river. The corporations promoted a rival Bill for a supply from the hills. The company's Bill was lost, and the Bill of the corporations was passed with a purchase clause introduced providing (1) for 25 years' purchase of maximum dividends, (2) compensation for prospective profits, and compulsory sale. These last were left to be ascertained by arbitration, and in the result the company obtained, in respect of these considerations, a sum equal to 11½ years' purchase of the maximum dividend. The company, therefore, got in all 36½ years' purchase. H. C., Mr. Orr-Ewing, chairman.

1876. Birmingham Water.—This Bill was promoted by the Corporation of Birmingham in order to acquire the undertaking of the Birmingham Water Company (statutory). An agreement for purchase had been come to between the corporation and the water company in 1851. This agreement was embodied in the clauses of the Birmingham Improvement Act, 1851 (14 & 15 Vict. c. xciii.). It authorised (s. 109) the corporation, on giving twelve months' notice in writing, to purchase "the whole of the waters, engines, machinery, pipes, mains, apparatus, works, and reservoirs of and belonging to the said Birmingham Waterworks Company." Failing agreement the price was to be "settled under the powers of the Lands Clauses Consolidation Act, 1845, relating to the purchase of lands otherwise than by agreement." The corporation failed to put in force this power of purchase, and in the interval between 1851 and 1876 the company expended further capital on their undertaking. The corporation were advised that they could not obtain specific performance by proceedings in Chancery. They accordingly promoted this Bill, which was passed.

1878. Nottingham Water.—Bill promoted by a statutory water company for additional powers. The corporation opposed, and themselves promoted a Purchase Bill. The corporation admitted the company to be efficient, but contended that public policy demanded the transfer. Company's Bill passed. No purchase clause. H. C., Mr. J. Holms, chairman.

1878. Cheltenham Water.—A statutory company promoted a Bill for further works. The corporation also promoted a Bill for works and compulsory purchase. The Committee found the preamble of the company's Bill not proven, and before giving a decision upon the corporation's Bill, they suggested that terms should be agreed upon. After two adjournments an agreement was ultimately arrived at, the compensation being 25 years' purchase of maximum dividends, a sum of £5,000 in discharge of debts and liabilities, the continuance of certain small annuities for which the company were then liable; compensation to manager or continuance in service for three years. H. C., Marquis of Lorne, chairman.

1887. Sheffield Water.—Owing to the bursting of their Dale Dyke reservoir, the company had become liable to pay large sums as compensation. They accordingly obtained an Act of Parliament authorising them for a period of 25 years to increase their authorised water rate by 25 per cent. The period of 25 years would expire in 1889. The company promoted this Bill for the purpose of continuing that increase for another period of 25 years, and also for certain filtration works with a view to rendering the water less soft. The corporation on their part promoted a Bill for compulsory purchase. This Bill was ultimately passed by the House of Lords Committee. Lord Derby, the chairman, announced the following decision : "The Committee have come to a decision that it is expedient that the works of the Sheffield Water Company and the control of the water supply should be transferred to the corporation. They have come to this conclusion on the grounds of public policy. But they do not consider that there has been any proof of mismanagement or failure of duty on the part of the company ; and consequently they think the terms of purchase should be not only fair but liberal. They are, therefore, of opinion that in fixing the price at which the company's works should be taken over the arbitrator should calculate the value as though the additional 25 per cent. expiring in the year 1889 had been continued for five additional years. They are not prepared to lengthen the time over which the sinking fund should extend beyond the period of 60 years. The result of this decision is, that the preamble of the Sheffield Water Company's Bill is not proved, and the preamble of the corporation Bill is proved, subject to the conditions named." Before the House of Commons Committee (Mr. W. W. B. Beach, chairman), an agreement between the parties was announced, the only matter requiring the attention of the Committee being the sinking fund. After the decision of the Committee of the House of Lords, and upon motion for the third reading of the Bill, on April 28th, 1887, in that House, an amendment was moved by the Earl of Wemyss, that the Bill be read the third time that day six months, on the ground that the company had not failed in their duty, and that if such transfers ought to be authorised as matters of public policy, Government should undertake public general legislation on the subject. After a discussion, in which the Earl of Derby, Lord Grimthorpe, Lord Balfour of Burleigh, the Duke of Argyll, Lord Bramwell, the Duke of Buckingham (chairman of committees), and the Earl of Morley took part, the amendment was withdrawn.

1890. Ystrad Gas and Water.—Statutory company with Bill for further works. Local authority opposed, asking purchase clause. Agreement come to before the Committee. H. L.

1891. Stourbridge Gas and Water.—Bill by Stourbridge Improvement Commissioners to purchase both undertakings compulsorily. Both companies statutory. Terms agreed as to gas. As to water, the Committee refused a purchase clause. H. C., Sir William Houldsworth, chairman.

1893. Accrington Gas and Water.—Statutory company promoted Bill for additional works and capital. The Corporation of Accrington opposed, asking for a purchase clause. Committee of the House of Lords allowed the Bill to proceed without a purchase clause. Before the House of Commons Committee a purchase clause was inserted by agreement of parties.

1893. Barry and Cadoxton Gas and Water.—The local board promoted a Bill to acquire compulsorily the undertaking of the gas and water company which was statutory. On the morning of the second day counsel announced a settlement.

1895. Whitby Water.—Statutory company promoted Bill for additional capital and sanction of certain unauthorised expenditure on works. The urban district council opposed, and also asked for a purchase clause. Preamble proved; purchase clause refused; but a proviso inserted to the effect that in the event of the undertaking being acquired by the district council, the amount of the new capital authorised (except so far as expended for certain defined purposes, and on works authorised by that Act), shall not be deemed to have increased the capital value of the undertaking, or be the subject of compensation or purchase. H. C., Sir James Kitson, chairman.

1894, 1895. Chesterfield Gas and Water.—In 1894 a statutory company promoted a Bill for additional capital and increase of water rate. The Chesterfield Corporation opposed, making complaints mainly in regard to water, and asking that the Bill might be rejected, to enable them to come with a Purchase Bill. Company's Bill rejected, the Committee intimating that in the event of purchase, both the gas and the water should be acquired. In 1895, a Bill was promoted for the formation of a joint board, and the purchase of the gas and water undertakings. Before the Committee the main point discussed regarding the purchase was whether the arbitration should be under the Lands Clauses Act, 1845, or under the Public Health Act, 1875. The Committee, following the general rule, decided in favour of the Lands Clauses Act. H. L., Earl of Jersey, chairman.

1896. Shoreham and District Water.—Bill by the Brighton Corporation to purchase a statutory company. Terms of purchase had been agreed beforehand, and the Bill was unopposed.

1896. Fylde Water.—Statutory company's Bill for new works, for extension of limits, and for £250,000 additional capital, with £62,500 borrowing powers. Corporation of Blackpool and various other local authorities opposed, complaining that the water was not properly filtered, and asking for a purchase clause. Preamble proved. No purchase clause. Additional capital £160,000, and borrowing powers £40,000. Chairman stated these figures were arrived at in view of the local authorities proposing to purchase in a few years. H. C., Sir Wm. Coddington, chairman. See *infra*, 1897, Fylde Water.

1896. Bournemouth Water.—A statutory gas and water company promoted a Bill for new works and extension of limits. The Urban District Council of Pokesdown (within the limits of the company) opposed, seeking a purchase clause as regards their portion. Preamble proved. No purchase clause. H. C., Mr. Seale Hayne, chairman.

1896. Ystradyfodwg Gas and Water.—The Ystradyfodwg U. D. C. (Gas and Water) Act, 1896 (59 & 60 Vict. c. lxxi.), s. 6, authorised the purchase by the council of the statutory gas and water undertakings of the Ystradyfodwg Gas and Water Company, and failing agreement, provided for arbitration to ascertain the price. There is no reference in the Jl. of G. L. for 1896 to show whether it was opposed or not.

1897. Fylde Water.—Bill promoted by the local authorities of Fleetwood, Blackpool, St. Anne's-on-the-Sea and Lytham, to acquire compulsorily the undertaking of a statutory water company. The company opposed. Preamble proved. H. C., Sir Wm. Coddington, chairman. See *supra*, 1896, Fylde Water.

1897. Eastbourne Water.—A statutory company promoted a Bill for further works, its water having become contaminated with salt. The corporation at the same time promoted a Bill for compulsory purchase and also for new works of their own. Part of these they abandoned, leaving the works in both Bills the same. Bill of the corporation rejected. H. L., Lord Fermanagh, chairman.

1897. Caerphilly Water.—Bill of the urban district council to acquire compulsorily part of the undertaking of the Rhymney Gas and Water Company supplying their district. Preamble not proved. H. L., Lord Knutsford, chairman.

1897. Southampton Water.—The corporation promoted a Bill to acquire compulsorily the undertaking of the South Hants Water Company, a statutory company. When the borough was extended, the corporation had given a pledge to promote a Purchase Bill, and it was suggested that this had weighed with the Local Government Board. Bill rejected. H. L., Lord Camperdown, chairman.

1897. Tynemouth Water.—Corporation Bill for compulsory purchase of the undertaking of a statutory company. Complaints as to quantity, quality, storage, etc. House of Lords Committee (Lord Poltimore, chairman) allowed the Bill to proceed. When the Bill came on before the Commons Committee, it was announced that terms had been arranged, including arbitration under the Lands Clauses Act.

1897. Harrogate Water.—Corporation Bill for compulsory purchase of statutory company. Company were also promoting a Bill for additional works to cost £90,000. H. L. Committee (Lord Poltimore, chairman) passed the Bill. In H. C. (Sir Wm. Coddington, chairman) the preamble was proved.

1897. Lowestoft Gas and Water.—Corporation Bill for compulsory purchase of the Lowestoft Water, Gas, and Market Company (statutory). The promoters said they would not have asked for the gas but for the water. The corporation complained of the water, but offered no new supply. The H. L. Committee (Lord Poltimore, chairman) rejected the Bill.

1898. Rhymney and Aber Valleys Gas and Water.—An undertaking was authorised for supplying with gas and water a number of districts in the county of Monmouth and in the county of Glamorgan. Portions of these parishes were supplied by a statutory company authorised in 1892. An agreement was come to between the parties which was scheduled to the Act.

1898. Hartlepool Gas and Water.—A statutory company promoted a Bill for further reservoirs and additional capital to meet increased demand for soft water for trade purposes. The corporation opposed, and were allowed to go into the question of gas as well as water. They sought a purchase clause as to both gas and water. Preamble proved. No purchase clause. H. C., Sir James Kitson, chairman.

1898. Filey Gas and Water.—Bill promoted by the urban district council to acquire compulsorily the undertaking of a statutory company. There had been negotiations extending back many years. The promoters asserted that the company were opposing in order that the purchase might be considered compulsory under the Lands Clauses Act. For the company it was urged that there being no complaints, there was no precedent. Preamble proved. H. L., Earl of Kintore, chairman.

1898. Norwich Water.—A statutory company promoted a Bill for new works and further capital. The corporation opposed and asked for a purchase clause. Preamble proved. No purchase clause. H. C., Mr. A. H. Brown, chairman.

1898. Folkestone Water.—A statutory company promoted a Bill for new works and additional capital. The corporation promoted a Bill for compulsory purchase of the undertaking. Their Bill did not provide for new works. Company's Bill allowed to proceed. Corporation's Bill not allowed to proceed. H. L., Earl of Kintore, chairman.

1898. Rochdale Water. 1898. Todmorden Water.—Bills promoted by the Corporations of Rochdale and Todmorden respectively, to enable them to acquire the undertaking of the Todmorden Water Company. The purchase was by agreement. The opposition to the Bill was from certain public bodies and mill-owners. Both Bills passed. H. L., Lord Hawkesbury, chairman.

1898. Brompton, Chatham, Gillingham and Rochester Water.—A statutory company promoted a Bill for further powers. It was opposed by the Corporation of Chatham and the Urban District Council of Gillingham, who desired to purchase. These opponents undertook to come next year, with or without Rochester, for a Purchase Bill. In the course of the case, the chairman said the Committee would assume that such a Bill would be promoted in the next session, but that they did not consider the question of purchase was before them then. The opponents pressed for a suspensory clause in regard to expenditure, in view of a Purchase Bill. Preamble proved. Suspensory clause not inserted. H. C., Colonel Gunter, chairman.

1899. South Hants Water.—A statutory company promoted a Bill for additional works and extension of limits. The Southampton Corporation promoted a Bill to acquire compulsorily the portion of the undertaking within the borough. Before a Committee of the House of Lords the Purchase Bill was allowed to proceed, but it was lost in the other House.

1899. Glastonbury Water.—The Corporation of Glastonbury having the water supply in their own hands, promoted a Bill for further works, additional capital, and extension of limits of supply. The Wells R. D. C. opposed and objected to the inclusion of certain outlying parishes.

The Committee decided that the Bill should proceed, the district council being authorised to purchase their "portion of the waterworks and plant." H. L., Lord Derby, chairman.

1899. New Mills Water.—The urban district council promoted a Bill to acquire a water supply then in the hands of a private owner, who was willing to sell. Newtown was within the district of the urban district council, but was within the limits of the Stockport Water Company. This company and the Stockport Corporation (who had agreed to purchase the undertaking of the Stockport Company and had a Bill in Parliament for the necessary authority) opposed. Preamble not proved "principally on financial grounds." H. C., Mr. Baldwin, chairman.

1899. Stockport Water.—The corporation promoted a Bill to acquire the undertaking of the Stockport District Water Company. An agreement had been come to. The Bill contained a clause to enable outside authorities to purchase their portion "of the water undertaking." The outside authorities contended that they should not be made to pay anything for goodwill, but only for their portion of the pipes, plant, etc. In the House of Commons (Mr. Baldwin, chairman) the Committee decided to retain the word "undertaking." In the House of Lords (Lord Camperdown, chairman) the same decision was arrived at, save as regards one particular district (New Mills; see 1899, New Mills Water, *supra*), where there were special circumstances, and where the Committee allowed authority to purchase their "portion of the waterworks and plant" (s. 60). See 1900, Morecambe Gas, *ante*, p. 121. See also *ante*, pp. 37 *et seq*.

1899. Airdrie and Coatbridge Water.—A statutory company promoted a Bill to authorise the abandonment of certain works authorised by their Act of 1892, and to construct others and raise additional capital. The corporations of Airdrie and Coatbridge opposed, complaining *inter alia* of rates and asking for a purchase clause. Bill allowed to proceed without purchase clause. H. L., Lord Fermanagh, chairman. See 1900, *infra*.

1899. Godalming Water.—The corporation promoted a Bill to acquire by agreement the undertaking of a limited company authorised by Provisional Order to supply their district and certain other districts. An agreement had been come to with the company. The outlying districts opposed. The House of Commons Committee (Mr. Schwann, chairman) inserted a clause directing that any surplus profits should be apportioned between the outside districts and the borough according to the amount of water rents, and the portion belonging to the outside districts should go in reduction of water rents, and the portion belonging to the borough should go either in reduction of water rents or be carried to the general district fund. In the House of Lords the only opposition was from twenty shareholders in the company, who said the price which had been agreed was inadequate, and who asked for open arbitration terms. Bill allowed to proceed. Lord Hawkesbury, chairman.

1899. Horsforth Water.—A statutory company promoted a Bill for new works. The urban district council opposed, and also promoted a Purchase Bill. The Burley-in-Wharfedale U. D. C. opposed on the ground that by their own Bill they proposed to acquire the same gathering ground as the company. There had been complaints as to management, quantity, and quality, and there had been frequent negotiations for purchase. Preamble of the Purchase Bill proved, and that of the Company's Bill not proved. H. C., Mr. Baldwin, chairman.

1899. Bognor Water.—The local authority promoted a Bill to acquire compulsorily the undertaking of a statutory water company. In 1894 there had been an arbitration under the Public Health Act, 1875, s. 52, and the arbitrators had decided that the company were willing to supply water proper and sufficient for all reasonable purposes. Since then complaints were alleged of insufficient storage and pressure. Bill not allowed to proceed. H. L., the Earl of Jersey, chairman.

1899. Newhaven and Seaford Water.—This Bill proposed to constitute a joint water board for the two districts and for the compulsory acquisition of the undertaking of the Newhaven and Seaford Water Company. That company opposed. The Lewes Water Company also opposed on the ground that it was proposed to authorise the board to obtain their water from that company's area of supply, and to sink a well within a mile of one belonging to that company. Bill not allowed to proceed. H. L., Lord Loch, chairman.

1900. Exmouth Water.—A statutory company promoted a Bill for further works and capital. The urban district council opposed the Bill and also promoted a Bill for purchase. As the result of negotiations the Purchase Bill was allowed to pass unopposed, the terms arranged including arbitration under the Lands Clauses Acts, and the usual clause for compensating officers and servants.

1900. Sevenoaks Water.—A statutory company having applied to the Board of Trade for further capital, a three years' purchase clause was, by agreement, inserted in favour of the Sevenoaks Urban District Council. See also Sevenoaks Water, 1908, *infra.*

1900. Hemel Hempsted Water. — In 1885 a limited company obtained a Provisional Order within certain defined limits which included a small portion of the parish and borough of Hemel Hempsted, but they had not constructed any works or supplied water. In 1896 another limited company obtained a Provisional Order within certain limits, which included the greater part of Hemel Hempsted. By this Act of 1900 the Corporation of Hemel Hempsted carried out by agreement the purchase of so much of the rights of the first company as were within their area and the whole of the undertaking of the second company.

1900. Airdrie, Coatbridge, and District Water.—This Bill proposed to constitute a water trust for the boroughs of Airdrie and Coatbridge and the adjoining district, and to acquire compulsorily the undertaking of a statutory water company. The company opposed, but before the Committee it was announced that the parties had agreed upon terms. Sir T. Gibson Carmichael, chairman.

1900. North Warwickshire Water.—A statutory company promoted a Bill for extension of their limits of supply to a number of rural districts in the neighbourhood of Coventry and Birmingham, and to construct the necessary works. Two of these districts—the Meriden and Solihull rural districts—opposed on the question of the period when they might purchase their part. The county council had agreed with the promoters on a clause to the effect that each of the districts should be allowed to purchase their portion at any time after twenty-five years. In the result the Committee reduced this period to ten years. H. C., Mr. Lewis Fry, chairman.

1900. Dorking Water.—A statutory company promoted a Bill for additional works and capital. The Dorking U. D. C. and the Dorking R. D. C. opposed and sought a purchase clause. There had been negotiations in 1898. The Committee passed the preamble without a purchase clause. Eventually the terms of a purchase clause were agreed between the parties and inserted in the Bill. It included arbitration under the Lands Clauses Act.

1900. Spalding Water.—This was a Bill promoted by the urban district council for the acquisition of the undertaking of a statutory company. The parties agreed.

1901. Hartlepools Gas and Water.—The Corporations of Hartlepool and West Hartlepool promoted a Bill to acquire compulsorily the statutory undertaking of the Hartlepool Gas and Water Company. In opening, the counsel for the corporations said : "He did not know that any great fault was to be found with the company, and he would take it therefore that their gas and water were fairly good in quality and quantity, and below the maximum price. The case for the Bill was therefore based on public policy." Preamble not proved. H. C., Mr. Schwann, chairman.

1901. Wells Water.—A statutory company promoted a Bill for further powers. The local authority promoted a Bill to acquire the undertaking compulsorily. The parties came to an agreement, and an agreed purchase clause was inserted. This provided, *inter alia*, for arbitration under the Lands Clauses Act, and it made express provision that 10 per cent. should be allowed in respect of compulsory purchase. H. C., Mr. Arthur Elliot, chairman.

1901. Llandrindod Water.—A statutory water company promoted a Bill for extension of their limits, additional capital and new works. The urban district council as successors of two local authorities, who respectively in 1894 and 1893 obtained power to purchase the undertaking of the water company, opposed, and also promoted a Bill of their own for purchase. The Committee decided in favour of purchase under the Provisional Order of 1893. Ultimately the matter ended in agreement, and the company's Bill was withdrawn. H. C., Mr. Fison, chairman.

1901. Burgess Hill Water.—Bill of a statutory company for additional capital, etc. Opposed by the local authorities of Burgess Hill and Cuckfield, who sought a purchase clause authorising them, dependent on their coming to Parliament for power, to form a joint board and to acquire the undertaking. Preamble proved ; no purchase clause. H. C., Mr. Fison, chairman.

1901. Southport Water.—Bill promoted by the Corporation of Southport, the Birkdale U. D. C., and the West Lancashire R. D. C., to constitute a joint water board to acquire compulsorily the undertaking of the Southport Waterworks Company. In the previous year the company had obtained an Act for new works and additional capital ; but a clause was inserted that these powers should not be taken into account in the event of a joint board being authorised in the present session with power to purchase. The promoters of this Bill made no serious complaints against the company. The Bill was allowed to proceed. H. L., Earl of Jersey, chairman.

1901. Aldeburgh Water.—The Corporation of Aldeburgh by this Bill obtained power to acquire compulsorily the undertaking of a company who had been supplying the borough under a Provisional Order. The purchase price had been agreed, and the company were consenting parties.

1901. Broadstairs Water.—By this Act, the Urban District Council of Broadstairs and St. Peter's obtained confirmation of an agreement for the sale and purchase of the water undertaking of a statutory company then supplying Broadstairs. The price had been agreed, and was stated in the scheduled agreement.

1901. Cromer Water.—A limited company was formed in 1882 for supplying the parish of Cromer and certain adjoining parishes with water. The limited company obtained a Provisional Order in 1882. By this Act of 1901 they sought re-incorporation, further capital and works, and an extension of their limits of supply. The Cromer Urban District Council opposed the Bill, but in the result, a two years' purchase clause (s. 86) was inserted by agreement. That portion of the clause providing for compensation to officers and servants does not state any number of years service as being necessary for qualification for right to compensation as in the Yeovil case of 1898, *ante*, p. 112.

1901. Ilkeston and Heanor.—This was a Bill to authorise the formation of a joint board representative of the Corporation of Ilkeston and the Heanor Urban District Council. The Corporation of Ilkeston had, under the Public Health Acts, constructed certain waterworks, and were supplying water, and the Heanor Urban District Council had also done the same for their district, but a further supply of water was needed. The Meerbrook Sough Company had, under an Act of 4 & 5 Vict., constructed a certain sough, level or water-gate, called the Meerbrook Sough, with a view to relieving some of the mines, veins, and rakes of lead ore in the parish of Winksworth, in the county of Derby, from water. The joint board were authorised to acquire and utilise the water in the Meerbrook Sough, and an agreement for the purchase of the company's undertaking was scheduled to the Act, the price being therein stated.

1902. Devonport Water.—A statutory company promoted a Bill for further works. The Devonport Corporation promoted a Purchase Bill. The quality of the water was good. In the H. L. (E. Dartrey, chairman) the company's Bill was rejected, and the corporation's Bill allowed to proceed. In the H. C. (Sir James Woodhouse, chairman), the company again opposed the Purchase Bill, but the preamble was proved.

1902. Ystradfellte Water.—The Neath Rural District Council promoted a Bill for extensive works to supply their district with water. Within the district was a statutory undertaking, authorised by the Cwm Avon Gas and Water Order, 1885. After the Bill was introduced, an agreement was come to for the purchase of this undertaking (Standing Orders having been dispensed with). The Bill passed with the necessary purchase clause, the agreement being scheduled.

1902. North Warwickshire Water.—By an Act of 1898, it was provided that if Coventry extended its limits so as to include any portion of the limits of supply of the company, the company should sell that portion of the undertaking to Coventry. Afterwards Coventry extended its boundaries so as to include a portion of the limits, and gave notice to purchase. By the Act of 1902, provisions were made for carrying out certain details in connection with the purchase, including the day for the completion of the purchase (s. 7).

1903. Harrogate Water.—Under the Harrogate Water Act, 1903, the Corporation of Harrogate acquired the water undertaking of the Knaresborough Urban District Council. The original undertaking for the supply of Knaresborough was sanctioned by Acts of 1764 and 1823, and was afterwards acquired by the Knaresborough Urban District Council. The arrangement between the council and the corporation was embodied in an agreement which was scheduled to this Act of 1903. The water limits were extended so as to include the limits of the vendors.

1905. Truro Water. — By this Act the Truro Water Company was authorised to construct additional works, and to raise additional capital. In the event of the introduction of a Bill by the Corporation of Truro in the next or the succeeding session, to empower them to purchase the company's undertaking, the company may not oppose except so far as may be necessary to secure protective provisions. The clause appears to have been inserted by agreement.

1907. St. Neot's Urban District Council.—By this Act an agreement between the council and the liquidator of the St. Neot's Water Company (a statutory concern) for the purchase of the undertaking is confirmed.

1908. Skegness Urban District.—See Skegness Water, 1905, *ante*, p. 130.

1908. Sevenoaks Water Order.—A purchase clause in favour of the urban district council was inserted by agreement.

1908. Slough Water.—The Slough Urban District Council promoted the Bill for the purchase of the Slough Waterworks. The Committee, while recognising that it had been a matter of public policy for the water supply of places to be under the care of local authorities, doubted whether this young authority had sufficient experience. The Committee suggested that the council should try to come to terms with the company. No terms were agreed to, and the Committee eventually held that no case for compulsory purchase had been made out, and declined to put compulsion on the company in any shape or form.

1908. Stourbridge Water Order.—A purchase clause in favour of a water board was inserted in this Order by agreement.

1909. Clevedon Water.—By this Act the company were bound not to oppose an application by the Clevedon Corporation for purchase in any of the next three available sessions. Purchase to be carried out on Lands Clauses Act terms, and in addition, the taxed costs of obtaining the Company's Act, the reasonable costs of winding up the company, and compensation to company's officials. In the meantime the company may not raise more than £3,000 capital, except with the consent of the corporation.

1909. Worksop Waterworks.—By this Act the company were bound not to oppose a Bill to be promoted in the next available session by the Worksop Urban District Council for the purchase of the undertaking. The purchase price is not to be enhanced by the passing of the

Act, and the company may not raise further capital in the meantime without the consent of the council.

1909. Risca Urban District Council Water.—By this Act the Risca Urban District Council was, by agreement, authorised to purchase the undertaking of the Western Valleys (Monmouthshire) Water and Gas Company.

1909. Stourbridge and District Water Board. — By this Act a water board for the Urban District of Stourbridge, Lye, and Wollescote in the county of Worcester, and Amblecote in the county of Stafford, and the Rural District of Kingswinford in the latter county was constituted with authority to acquire the undertaking of the Stourbridge Water Company.

1909. Glamorgan Water Bill.—The Bill was promoted by the Glamorgan County Council with the object of forming a water board representative of the local authorities concerned, and acquiring the undertakings of certain water companies and local authorities. The preamble was declared proved by the Committee of the House of Commons, but the Bill was rejected by the House of Lords Committee.

ABSTRACTS

OF THE

GASWORKS CLAUSES ACTS, 1847 AND 1871.

GASWORKS CLAUSES ACT, 1847.

(10 & 11 Vict. c. 15.)

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GASWORKS CLAUSES ACT, 1871.

(34 & 35 Vict. c. 41.)

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These statements are to be kept by undertakers, and sold to all applicants at a price not exceeding one shilling per copy ;

It also gives the Board of Trade power to alter the form of accounts from time to time ;

And provides that in case of default by the undertakers, they are to be liable to a penalty of 40*s*. for every day of such default.

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GASWORKS CLAUSES ACT, 1847.

(10 & 11 VICT. c. 15.)

An Act for consolidating in one Act certain Provisions usually contained in Acts authorising the making of Gasworks for supplying Towns with Gas. [23rd April, 1847.]

Extent of Act.

[**1.**] This Act shall extend only to such gasworks as shall be authorised by any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith, and all the clauses of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, with the clauses of every other Act which shall be incorporated therewith, form part of such Act, and be construed therewith, as forming one Act.

The preamble was repealed by Statute Law Revision Act, 1891 (54 & 55 Vict. c. 67).

Powers of gas or water company as a corporation.

A gas or water company established by Act of Parliament is thereby made a corporation. It does not thereby necessarily possess the common law powers incident to corporations aggregate; because, being the creature of statute, such a corporation possesses those powers only which are conferred by the statute. See hereon *Attorney-General* v. *West Gloucestershire Water Co.*, [1909] 2 Ch. 338, cited at length at p. 153 *post.* The Special Act invariably enacts that the company shall have a common seal. It also limits and defines the land or the quantity of land which the company may hold. Special Acts usually incorporate the Companies Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16), and companies thus incorporated become entitled under s. 124 of that Act to make byelaws for certain limited purposes therein defined; and by s. 127 the production of a written or printed copy of the byelaws of the company having the common seal of the company affixed thereto shall be sufficient evidence of such byelaws in all cases of prosecution under the same. As to the power of a municipal corporation empowered by Special Act to carry on a specified undertaking, see *Attorney-General* v. *Manchester Corporation*, [1906] 1 Ch. 643.

A gas or water company authorised by provisional order is likewise a corporation and has a common seal. Such a company is not incorporated by the provisional order, but is formed under the Companies Acts (now consolidated by the Companies (Consolidation) Act, 1908 (8 Edw. 7 c. 69), prior to its application for a provisional order. Its powers as a corporation are defined in those Acts and in the provisional order, and the extent of land which the company may hold is limited. This limitation is expressly required to be made by the Gas and Water Works Facilities Act, 1870 (33 & 34 Vict. c. 70), s. 7. Such land can be acquired by agreement only.

Sect. 1.

NOTE.

Every gas or water company incorporated in the ways above mentioned, sues and is sued by its corporate name. Under the Gas and Water Works Facilities Acts, 1870 and 1873, individuals as well as companies may obtain parliamentary powers to supply gas or water or both.

How a corporation may contract.

It is a general rule of law that a corporation can only contract under its common seal, as that is the only way in which it can express its will or do any act. There are exceptions, however, where the general rule would occasion inconvenience or tend to defeat the very object for which the corporation was created—thus, engaging inferior servants, or the doing of acts very frequently recurring, or too insignificant to require the common seal, are established exceptions. Thus, a gas company may sue upon a contract not under seal for the price of gas supplied (*Church* v. *Imperial Gaslight and Coke Co.* (1837), 6 A. & E. 681). See this case commented on by COLERIDGE, C.J., in *Austin* v. *Guardians of Bethnal Green* (1874), L. R. 9 C. P. 91; and see *Mayor of Ludlow* v. *Charlton* (1840), 6 M. & W. 815. A gas company might be sued in *indebitatus assumpsit* for goods sold and delivered on an executed parol contract (*Beverley* v. *Lincoln Gaslight Co.* (1837), 6 A. & E. 829). So also on an executory contract (*Church* v. *Imperial Gaslight Co., supra; Arnold* v. *Mayor of Poole* (1842), 4 M. & G. 860). PARKE, B., said the former case may be supported on the ground that the special Act of the company contemplates the purchase from them of gas without any contract under seal (*Finlay* v. *Bristol and Exeter Rail. Co.* (1852), 7 Ex. 417). See further hereon *Lawford* v. *Billericay R. D. C.*, [1903] 1 K. B. 772 and the note at p. 844 *post.*

But there must be a special power, either express or implied, to draw and accept or indorse bills of exchange and promissory notes (*Broughton* v. *Manchester Waterworks Co.* (1819), 3 B. & A. 1). Where the business of the company cannot reasonably be carried on without the use of bills of exchange, the power is implied (*Ibid.;* and see *Mayor of Ludlow* v. *Charlton* (1840), 6 M. & W. 815).

It has been decided that mining companies, waterworks companies, gas companies, salt and alkali companies, and many others, are incapable of drawing, accepting, or indorsing bills of exchange. See *per* MONTAGUE Smith, J., in *Bateman* v. *Mid-Wales Rail. Co.* (1866), L. R. 1 C. P. at p. 512; and see *Bramah* v. *Roberts* (1835), 3 Bing. N. C. 963 (gas company); and *Broughton* v. *Manchester Waterworks Co., supra* (water company). A railway company also has no such power (*Bateman* v. *Mid-Wales Rail. Co., supra*). The Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), leaves the power of corporations in this respect where it was.

A company incorporated under the Companies Act, 1862, for the working of collieries, contracted, but not under seal, with an engineer for the erection of a pumping engine and machinery for use in the colliery, and paid him part of the price. In an action by the company against the engineer for a breach of contract in refusing to deliver the engine and machinery :—*Held*, affirming the decision of the Court of Common Pleas, that the action was maintainable, though the contract was not under seal (*South of Ireland Colliery Co.* v. *Waddle* (1869), L. R. 4 C. P. 617). COCKBURN, C.J., remarked, "We are asked to overrule a long series of decisions in all the courts which, in accordance with sound sense, have held that the old rule as to corporations contracting only under seal does not apply to corporations or companies constituted for the purpose of trading."

Where a municipal corporation were possessed of a dock, of which they allowed the use to ships needing repairs under certain printed regulations, and the plaintiff entered into a parol agreement with them for the use of the dock upon the terms of such regulations, it was held that the contract need not be under the seal of the corporation (*Wells* v. *Mayor, etc., of Kingston-upon-Hull* (1875), L. R. 10 C. P. 402). And where the plaintiff from time to time supplied coals to the guardians of a poor law union for the use of their workhouse, under a contract signed by the plaintiff, but not sealed by the guardians and the guardians received and used some of the coals, it was held that as the goods had been supplied and accepted by the defendants, and were such as must necessarily be from time to time supplied for the very purposes for which the defendants were incorporated, they were liable to pay for the coals, although the contract was not under seal (*Nicholson* v. *Guardians of Bradfield Union* (1866), L. R. 1 Q. B. 620, following *Clarke* v. *Cuckfield Union* (1852), 21 L. J. Q. B. 349); see further hereon *Lawford* v. *Billericay R. D. C.*, *supra*, and the note at p. 844 *post;* but the contract for the engagement of a clerk to the master of a workhouse by a board of guardians must, in order to bind the guardians, be under seal, it appearing that the clerk in question was principally engaged in keeping accounts of a somewhat complicated nature, requiring some amount of skill and capacity, and that the office he filled was so far considered of importance that by the orders of the poor law board, which have the effect of an Act of Parliament, the assent of one of the departments of the State was made necessary to the constitution of the office (*Austin* v. *Guardians of Bethnal Green*, *supra*).

As regards companies which have the Companies Clauses Act, 1845, incorporated with their special Acts, regard must be had to the provisions of that Act for the powers of the directors to bind the company without using its seal. See ss. 95 to 98 of the Act, *post*. As regards companies empowered by provisional order, similar provisions are to be found in the Companies (Consolidation) Act, 1908 (8 Edw. 7 c. 69), s. 76.

It is not necessary that contracts entered into between consumers and a company for a supply of gas or water should be stamped; the reason being that they are contracts for the sale of goods within the meaning of the Stamp Acts, and are thus exempted from duty (*Church* v. *Imperial Gaslight Co.*, *supra; West Middlesex Waterworks Co.* v. *Suwerkropp* (1829), M. & M. 408).

In a recent case it was, however, held that an agreement for the supply of electric power for a term of years on payment of a fixed charge per quarter and also one penny per unit is a security for a sum of money at stated periods and chargeable with duty at the rate of 2*s.* 6*d.* per cent. on the aggregate amount of the minimum annual payments, and the same principle will no doubt apply to similar agreements for the supply of gas (see *County of Durham Electrical Power Distribution Co.* v. *Inland Revenue Commissioners*, [1909] 2 K. B. 604).

The defendants, a municipal corporation, having, by transfer from a body of town commissioners, power to purchase certain gasworks, and being also a local board, took proceedings for the purpose of purchasing the works and of assessing the price to be paid by arbitration. In pursuance of a resolution passed at a meeting of a sub-committee appointed to manage the business, the report of which committee was adopted by the council, the plaintiff, a gas engineer, was employed as a witness in the arbitration to support the evidence of the defendants' valuer. There was no appointment of the plaintiff under seal, but he acted as witness under the instructions of the valuer who was so appointed. In all these proceedings the defendants erroneously described themselves as acting as the local board, and described their seal as the seal of the local board. It did not appear that the seal of the local board was other than the municipal seal. In an action brought by plaintiff against the corporation for his services as witness:—*Held*, that the municipal corporation and the local board could not be treated as independent bodies; that the plaintiff's contract was in substance with the corporation, and that he was entitled to recover (*Andrews* v. *Mayor, etc., of Ryde* (1874), L. R. 9 Ex. 302); but when a municipal corporation acts as an urban sanitary authority its contracts are governed by s. 174 of the Public Health Act, 1875, and not by the general law as to the contracts of corporate bodies (*Young* v. *Leamington (Mayor, etc., of)* (1883) 8 App. Cas. 517).

Contracts with metropolitan gas companies.

By the Metropolis Gas Act, 1860 (23 & 24 Vict. c. 125), s. 20, it is provided that "notwithstanding its being required by any Act of Parliament or otherwise that the gas company's contracts shall be under seal, every contract of the gas company entered into in accordance with this Act shall without seal be binding on them if the contract be signed by at least two of their directors

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or by their secretary or other officer, by the authority of at least two of their directors." By s. 4 "gas company" means "any and every company, and any person or persons supplying gas within the limits of this Act." The special Acts of the metropolitan companies must be examined on this subject, as it is not safe to assume that all the provisions of the Act of 1860 apply to these companies (see *e.g.*, s. 3 of the Commercial Gas Act, 1875, *post*, p. 309, and s. 8 of Gaslight and Coke Act, 1876, *post*, p. 332.) Besides this, the special Acts may be found to contain special provisions on the subject of contracts. See *e.g.*, s. 72 of the Commercial Gas Act, 1852.

Contracts with local authorities under Public Health Act, 1875.

The Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 174, enacts that every contract made by an urban authority whereof the value or amount exceeds £50 shall be in writing and sealed with the common seal of such authority (*Young* v. *Corporation of Leamington* (1883), 8 App. Cas. 517; *Hunt* v. *Wimbledon Local Board* (1878), 4 C. P. D. 48; *Bournemouth Commissioners* v. *Watts* (1884), 14 Q. B. D. 87; *Tunbridge Wells Improvement Commissioners* v. *Southborough L. B.* (1888), 60 L. T. 172). The words "exceeds £50" apply only to a contract which the parties at the time of making it contemplate will exceed £50, and, therefore, where a medical man was engaged to attend certain fever patients, and his fees in the end exceeded £50, he was held entitled to recover (*Eaton* v. *Basker* (1881), 7 Q. B. D. 529). See the further provisions of s. 174 and the notes thereon at p. 843 *post*.

Suing corporations in county court.

A corporation may be sued in a county court, and "dwells" at the place where its business is carried on (*Taylor* v. *The Crowland Gas and Coke Co.* (1854), 11 Ex. 1), *i.e.*, at the place where its principal business is carried on (see *Brown* v. *L. and N. W. Rail. Co.* (1863), 32 L. J. Q. B. 318; *Le Tailleur* v. *South Eastern Rail. Co.* (1877), 3 C. P. D. 18). The head office of a trading company is not necessarily the office registered under the Companies Act, but the place where the business of the company is conducted (*Keynsham Gas Co.* v. *Baker* (1864), 53 L. J. Ex. 41; see also *Aberystwith Pier Co.* v. *Cooper* (1866), 35 L. J. Q. B. 44).

Wrongful acts of servants of corporations.

A corporate body is answerable for such of the wrongful acts of its servants as are done in the execution of the powers vested in the corporation (*Smith* v. *Birmingham and Staffordshire Gaslight Co.* (1834), 1 A. & E. 526; *Green* v. *London General Omnibus Co.* (1859), 29 L. J. C. P. 13; *Goff* v. *Great Northern Rail. Co.* (1861), 30 L. J. Q. B. 148). It is not necessary that the servants' authority should be under seal (*Smith* v. *Birmingham, &c. Gaslight Co.*, *supra*; *Eastern Counties Rail. Co.* v. *Brown* (1851), 20 L. J. Ex. 196; *Goff* v. *Great Northern Rail. Co.*, *supra*). The servant must however be acting within the scope of his employment (*Allen* v. *L. and S. W. Rail. Co.* (1870), L. R. 6 Q. B. 65; *Bank of N. S. Wales* v. *Owston* (1879), 4 A. C. 270; *Bolingbroke* v. *Swindon Local Board* (1874), L. R. 9 C. P. 575). A corporation will not be liable in respect of the wrongful conduct of a servant in respect of an act which the corporation itself is not authorised to perform (*Poulton* v. *L. and S. W. Rail. Co.* (1867), L. R. 2 Q. B. 534; *Shaw, Savill and Albion Co.* v. *Timaru Harbour Board* (1890), 15 App. Cas., 429).

Bankruptcy petitions by corporation.

Under the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 148, a corporation may act by any of its officers authorised in that behalf under the seal of the corporation. It may be a petitioning creditor. See *Re Calthrop* (1868), L. R. 3 Ch. 252.

Malicious prosecution.

An action for malicious prosecution will lie against a corporation (*Edwards* v. *Midland Rail. Co.* (1880), 6 Q. B. D. 287; *Cornford* v. *Carlton Bank, Limited*, [1900] 1 Q. B. 22). See also *Citizens Life Assurance Co.* v. *Brown*, [1904] A. C. 423.

Contracts *ultra vires.*

In the case of a company incorporated under the Companies Act, 1862 (25 & 26 Vict. c. 89), the House of Lords decided that where the directors had entered into a contract which was *ultra vires* of the directors and of the company even the subsequent assent of the whole body of shareholders would have no power to ratify it (*Ashbury Railway Carriage and Iron Co.* v. *Riche* (1875), L. R. 7 H. L. 653). The law laid down by the House of Lords in this case applies to all companies created by any statute for a particular purpose, and not only to companies created under the Companies Act, 1862: *per* Lord BLACKBURN in *Wenlock* (*Baroness*) v. *River Dee Co.* (1885), 10 App. Cas., at p. 360. *Cf. Corbett* v. *South Eastern and Chatham Railways Managing Committee*, [1906] 2 Ch. 12.

A gaslight company was incorporated by Act of Parliament which provided that eighteen shareholders should be directors, and as such should use the common seal, manage the affairs of the company, lay out money, purchase lands, etc., and make contracts for lighting and for the sale of materials. The company were empowered to make byelaws under seal for its government and for regulating the proceedings of the directors, officers, servants, etc. At a meeting of the company a resolution was passed, not under seal, that a remuneration should be allowed to every director for his attendance in court, committees, etc., viz., one guinea for each attendance:—*Held*, that a director who had attended courts, etc., could not maintain an action for payment according to the above resolution, for that it was not a byelaw within the statute, nor a contract (if such could have been available) to pay the directors or any of them for their attendance, and the directors could not be considered as servants to the company, and as such entitled to remuneration for their labour according to its value (*Dunston* v. *Imperial Gaslight and Coke Co.* (1832), 3 B. & Ad. 125).

Remedy where a gas or water company exceeds its powers.

Where a gas or water company incorporated by parliamentary authority attempts to go beyond its powers, either as to limits of supply or in any other way, the question arises, What is the remedy? The general rule may be stated thus: No action can be maintained by any individual unless he sustains particular injury, because the powers conferred by Parliament being for the public benefit, the public only are entitled to complain; nevertheless, by obtaining the assent of the Attorney-General, proceedings may, in certain circumstances, be taken by the individual, either at the active instance of the Attorney-General, or by the individual in the name of the Attorney-General (his approval having been first obtained), "on the relation" of the individual. The old procedure was by information in Chancery; but, since the Judicature Act, 1873 (36 & 37 Vict. c. 66), action is substituted (R. S. C., Ord. 1, r. 1). In *Mayor, etc. of Liverpool* v. *Chorley Waterworks Co.* (1852), 2 De G. M. & G. 852, Lord CRANWORTH decided that persons obtaining from the legislature power to interfere with the rights of property are bound strictly to adhere to the powers so conceded to them; to do no more than the legislature has sanctioned, and to proceed only in the mode which the legislature has pointed out; but (except in a proceeding at the instance of the Attorney-General) anyone seeking the assistance of the court to restrain the violation of such a contract with the legislature is bound to show that he has a private interest in the matter. Therefore, where a Waterworks Act empowered a company to divert the water of a stream, without limit as to quantity, by means of an open channel filled with loose stones, and they were diverting it by means of a culvert, it was held that the Liverpool Corporation (who supplied Liverpool with water under the Liverpool Corporation Waterworks Act, 1847, and who were entitled to the water of a stream into which the diverted stream had flowed) were not entitled to an injunction to restrain a violation of the terms of the Act as to the mode of diversion. In the course of his judgment, Lord CRANWORTH said (p. 860): "For the purposes of the present argument, we will assume that even within the limits of deviation they are bound to convey the water by an open watercourse, and not by a covered channel, *i.e.* a tunnel or culvert. Still the question arises whether the acts of the defendants, departing in these respects from the strict parliamentary powers, are acts of which the plaintiffs have any right to complain, or demand the prevention, in the actual circumstances; for though we accede to the general observation that, persons obtaining from the legislature, by Acts of Parliament, like those now before us, powers to interfere with rights of property for their own purposes (whether of a local nature or merely private), are bound strictly to adhere to the powers so conceded to them, to do no more than the legislature has sanctioned, and to proceed only in the mode which the legislature has pointed out; yet it does not follow that any one of her Majesty's subjects has a right to complain whenever parliamentary powers of this nature have not been strictly followed or are intended

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to be transgressed. In such cases (we, of course, except any proceeding at the instance of the Attorney-General), a plaintiff, seeking the assistance of a court of equity, by way of injunction, is bound to show that he has an interest in preventing the defendants from doing what is in fact, or may well be called, a violation of their contract with the legislature. He must show not only that the defendants are committing or intend to commit a wrong, but also that the wrong complained of does occasion or will occasion loss or damage to him, that he has a special or private interest in confining the defendants within the limits of their parliamentary powers. Now, in this respect, the corporation of Liverpool appear to us to have failed. It is clear, from the 23rd section of the defendants' Act, that they may, at point H., divert the water of the stream and cause it, by a proper channel, to flow into their reservoir. The plaintiffs have no interest whatever in the lands through or over which the water may so be made to flow; and to them it must be a matter of indifference—of no importance in any sense—whether it is carried by a longer or shorter line, by an open channel or by a culvert, by a course convenient or inconvenient, to the defendants."

In the earlier case of *Corporation of Cardiff* v. *Cardiff Waterworks Co.* (1859), 5 Jur. (N.S.) 953, the company's Acts provided that the limits for the supply of water should comprise "the whole of the town and port of Cardiff, and the parishes and places within and adjoining to such town." It was held that the word "port" was used in its popular sense, and did not extend to the district fixed by the Commissioners of the Treasury as the port of Cardiff for the purposes of the Customs duties; and inasmuch as the company were proceeding to lay down pipes to carry water to parishes which were neither within the town of Cardiff nor adjoining thereto but which were within the "port" if that word were taken not in its popular but in its wider sense, WOOD, V.-C., granted an injunction apparently on the ground that the defendants were breaking up the streets and roads in the town for the purpose of laying pipes which they intended to use for supplying water outside the authorised limits. See the last paragraph of the report at p. 956 as to certain proceedings on appeal.

In *Stockport District Waterworks Co.* v. *Corporation of Manchester* (1863), 9 Jur. (N.S.) 266, a bill was filed by the water company against the corporation and the Stockport Waterworks Company (Registered), charging that by an arrangement between the corporation and the registered company a junction was about to be effected at Reddish, near Manchester of the pipes of the two defendants, whereby Manchester water would be supplied in Stockport, which was within the limits of the plaintiffs. Lord WESTBURY, L.C., refused an injunction, and in the course of his judgment, said: "When an incorporated company is created for certain purposes undoubtedly the agency of the company, the course of action, and the sphere of action of the company are limited entirely to that which is defined by the legislature. What it is empowered to do it has a right to do, and what it is not empowered to do it must be considered as having no right to do. . . . We next come to the principal topic, the principal ground on which the plaintiffs rely, and that is, that the Manchester Corporation, as a water company, is limited in its sphere of action; with that argument I am very much disposed to agree, because if the Manchester company were at liberty to sell water without restriction, they might sell that water to every surrounding district, and the consequence would be, that they would draw from the sources of their supply, which sources they are authorised to resort to for the purposes of the township of Manchester, an amount of water which the legislature could not be considered as having had at all in their contemplation when the parliamentary powers for the benefit of Manchester were granted. I think, therefore, that if the case depended upon that, if I had here a party who had a right to restrain the Manchester Corporation within its proper limits, as, for example, the ratepayers, who were interested in having the water at the lowest amount, and in having the certainty of an abundant supply, or if I had the Attorney-General, who would be able to represent that larger view of the question—namely, that if you extend the purposes of the legislative grant to Manchester, you may be overstepping the bounds within which the legislature confined its view when it granted these powers to the Corporation of

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Manchester—if, I say, I had the Attorney-General here as an informant, representing that general view of the subject, the *bonum publicum* which is contained in that view of the subject, I should probably not hesitate to restrain the Corporation of Manchester from carrying into effect the agreement which they have entered into with the registered company. But here I have a rival company, and whatever may be the general merits of the controversy, the question is, whether they can be represented by that company."

So, in *Pudsey Coal Gas Co.* v. *Corporation of Bradford* (1873), L. R. 15 Eq. 167, a municipal corporation having under the provisions of an Act of Parliament bought up a gas company which previously supplied gas to the borough, and which had compulsory powers for the purpose within the borough, commenced supplying gas to an adjoining township in which another gas company already existed, having similar powers within the township. The gas company of the township having filed a bill against the corporation to restrain them from supplying gas within the township, and alleging as a personal injury which entitled them to maintain their suit, that the corporation had contracted to supply gas to a particular manufactory within the township which otherwise they must have supplied, and that they had thereby been deprived of the profits arising from the supply of gas to the manufactory, and that great loss would be sustained by them; it was held on demurrer that the injury alleged was not such as entitled the plaintiffs to maintain the suit. *Cf. Preston Corporation* v. *Fullwood L. B.* (1885), 53 L. T. 718. There the Corporation of Preston, who had no parliamentary powers for the purpose, supplied water to the adjoining urban district of Fullwood, and claimed the right to enter upon and break up the streets of Fullwood whenever occasion should require, for the purpose of repairing their water pipes, relying, as regarded some of the streets, on alleged irrevocable licences granted by the predecessors of the local board of Fullwood (*i.e.*, the surveyors of highways), and, as regarded other streets, on prescription:—*Held*, by NORTH, J., (1) that the claim of the corporation was to commit a nuisance; (2) that it was not in the power of the surveyors of highways to grant the alleged licences; (3) that, therefore, as a grant could not be presumed, the corporation could not obtain the right claimed by prescription. See *Edgeware Highway Board* v. *Harrow District Gas Co.* (1874), L. R. 10 Q. B. 92, *post*, p. 167.

Where a local authority, having the right to supply water within certain limits, were about to supply water in bulk within those limits to a railway company for the purpose of being used by the railway company, within the limits of another local authority possessing power to supply water, injunction was granted in proceedings taken by the Attorney-General on relation (*Wakefield Union* v. *Morley Corporation and G. N. Rail. Co.*, Jl. of G. L., March 6th, 1894, vol. 63, p. 441; and *Halifax Corporation* v. *Morley Corporation*, 10 T. L. R. 454).

A water company, authorised to supply water within the limits defined by their Acts, not only for domestic purposes but also in bulk, and to carry on the business usually carried on by water companies, agreed to supply water to W., who resided outside their district, and at his cost laid a main outside their district from which pipes were laid on to his property, and connected this main with their main just within the boundary of their district. The pressure in the company's main caused the water to flow through W.'s main and pipes to the terminals on his property where the water was received and used. It was held that the company were not entitled either on the terms of their special Acts or on the ground that such supply was incidental to their statutory powers to supply water outside their district; and that the supply of water to W. was not at the point where his main joined the company's main, but at the place where the water was delivered for use, and that therefore, the company were acting *ultra vires* and ought to be restrained (*Attorney-General* v. *West Gloucestershire Water Co.*, [1909] 2 Ch. 338). See further, *Attorney-General* v. *Metropolitan Electric Supply Co.*, [1905] 1 Ch. 24, 757.

Further, as to the right of the Attorney-General to institute proceedings in such cases, see *Attorney-General* v. *G. N. Rail. Co.* (1860), 1 Dr. &

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Sm. 154; *Attorney-General* v. *Ely, Haddenham and Sutton Rail. Co.* (169), L. R. 4 Ch. 194; *Attorney-General* v. *G. W. Rail. Co.* (1872), L. R. 7 Ch. 767; *Attorney-General* v. *Cockermouth L. B.* (1874), L. R. 18 Eq. 1872; *Attorney-General* v. *G. E. Rail. Co.* (1879), 11 Ch. D. 449; and *Attorney-General* v. *Shrewsbury Bridge Co.* (1882), 61 Ch. D. 752. As to whether the Attorney-General is bound to make out a case of public mischief, and whether the mere fact that a proceeding is *ultra vires* is sufficient, without injury to the public being shown, see *Attorney-General* v. *G. E. Rail. Co.*, *supra;* and *cf. Ware* v. *Regent's Canal Co.* (1858), 3 De G. & J. 212. Where the Attorney-General seeks by information to restrain a public body possessing statutory powers, from infringing a term introduced into their Act in the interests of the public as a condition of the exercise of their powers, it is not necessary to prove that injury to the public results from that infringement (*Attorney-General* v. *L. & N. W. Rail. Co.*, [1900] 1 Q. B. 78). At the instance of the Attorney-General on the relation of a number of omnibus proprietors, the London County Council were restrained from running omnibuses in connection with their tramways purchased under parliamentary authority (*London County Council* v. *Attorney-General*, [1902] A. C. 165). Applied in *Attorney-General* v. *Mersey Rail. Co.*, [1907] A. C. 45. In the London County Council case, *supra*, it was held that the jurisdiction of the Attorney-General to decide in what cases it is proper for him to sue on behalf of relators is absolute. See also *Attorney-General* v. *Sheffield Gas Consumers Co.* and other cases cited, *post*, p. 164 *et seq.*, as to breaking up streets without parliamentary authority in order to lay pipes.

Laches.

See as to attributing laches to the Attorney-General, *Attorney-General* v. *Wimbledon House Estate Co., Ltd.*, [1904] 2 Ch. at p. 42; *Attorney-General* v. *Grand Junction Canal Co.*, [1909] 2 Ch. 505.

When rights given by special Act cannot be surrendered or restricted.

Rights conferred by Act of Parliament upon a company for public purposes cannot be restricted or rescinded by private agreement between the company and third parties. In *Thames Conservators* v. *Southwark and Vauxhall Water Co.* (1897), 13 T. L. R. 155, MATHEW, J., held that an agreement whereby the water company limited and restricted their right to take water from the Thames to 24½ million gallons in 24 hours was lawful because it had been sanctioned by the legislature in subsequent legislation. Further, as to the general principle, see *Ayr Harbour Trustees* v. *Oswald* (1883), 8 App. Cas. 623, in which it was decided by the House of Lords that where the legislature confers powers on any body—whether one which is seeking to make a profit for shareholders or one acting solely for the public good—to take lands compulsorily for a particular purpose, it is on the ground that the using of that land for that purpose will be for the public good; and a contract purporting to bind such a body, and their successors not to use those powers, is void. And in *Mulliner* v. *Midland Rail. Co.* (1879), 11 Ch. D. 611, it was held that a railway company having the usual powers under their special Act to take and use land for the purpose of the railway and works, cannot—whether for valuable consideration or otherwise—alienate for any purpose except the purposes of the Act, any portion of its land not being "superfluous land" within s. 127 of the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), and not being land taken for extraordinary purposes within s. 45 of the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), nor any easement over the same, *e.g.*, a right of way. But there may be instances where the particular right of way over the lands of the company is not inconsistent with the purposes for which the lands were taken, and in such a case the company have power to grant it (*In re Gonty and M. S. & L. Rail. Co.*, [1896] 2 Q. B. 439). See, further, *Foster* v. *L. C. & D. Rail. Co.*, [1895] 1 Q. B. 711; *Grand Junction Canal Co.* v. *Petty* (1888), 21 Q. B. D. 273; *S. Eastern Rail. Co.* v. *Associated Portland Cement Manufacturers, Ltd.*, [1910] 1 Ch. 12; and see *Caledonian Rail. Co.* v. *Turcan*, [1898] A. C. 256. A local authority, empowered to make byelaws for the regulation of buildings within its jurisdiction, has no power to sanction plans in contravention of byelaws properly made (*Yabbicom* v. *King*, [1899] 1 Q. B. 444, following *McIntosh* v. *Pontypridd Improvements Commissioners* (1892), 61 L. J. Q. B. 164); and see *Baxter* v. *Bedford* (1885), 1 T. L. R. 424; *R.* v. *Newcastle-upon-Tyne* (*Mayor etc. of*) (1889), 53 J. P. 788.

NOTE.

Gasworks are within the Factory Acts.

Gasworks are within the Factory and Workshop Acts. The Departmental Committee on Water Gas (see their Report, Parliamentary Paper, 1899, C. 9164), in referring to the danger of the manufacture and use of carburetted water gas, say: "As regards manufacture, the danger to the persons employed appears to be, with proper machinery and arrangements, not greater than that incurred in coal-gas making; and any danger that there may be can, we think, be dealt with adequately under the Factory and Workshop Acts, for the purposes of which gasworks are non-textile factories." A departmental memorandum, dated May, 1899, has been issued upon this subject, and will be found in the annual report of the chief inspector of factories and workshops for the year 1899 at p. 63 (Parliamentary Paper Cd. 223, of 1900). The Brighton and Hove Gas Company were summoned at the instance of an inspector of factories. The company contended that they were not within the Acts, and had never given notice of accident to the Board of Trade under the Factory Act of 1878. The magistrates held that the gasworks came within the Factory Acts, and imposed fines on six summonses (*Owner* v. *Brighton and Hove Gas Co.*, Jl. of G. L., August 28th, 1900, p. 529, and September 4th, 1900, p. 586). At Sevenoaks Petty Sessions the Sevenoaks Gas Co. were summoned for not keeping a register of employees under 16 years of age and for not affixing an abstract of the Factory Act on the walls of the works. A fine of £1 was imposed, Jl. of G. L., March 24th, 1903, p. 778. Further on the subject of notice of accidents, see the Notice of Accidents Acts, 1894 (57 & 58 Vict. c. 28) and 1906 (6 Edw. 7, c. 53).

Costs of promoting or opposing Bills in Parliament.

By the Borough Funds Acts, 1872 (35 & 36 Vict. c. 91), and 1903 (3 Edw. 7, c. 14), the costs of promoting or opposing Bills in Parliament or of prosecuting or defending any legal proceedings necessary for the promotion or protection of the interests of the inhabitants of the district may, upon the observance of certain conditions, be paid by the governing body out of the borough fund, borough rate, or other the public funds or rates; except in the case of Bills promoted by the governing body for the establishment of any gas or water works to compete with any existing gas or water company established under any Act of Parliament, or where the promotion or opposition of a Bill by the governing body has been decided by a committee of either House of Parliament to be unreasonable or vexatious. Before the passing of the Act of 1872 the general principle was that governing bodies were able to defray the expenses of opposing Bills out of the public funds or rates, if the opposition was undertaken in defence of the corporate property or rights, and this right is not taken away by the Act (*Attorney-General* v. *Brecon* (1879), 10 Ch. D. 204). See the authorities more fully considered later under the Borough Funds Acts, 1872 and 1903.

By the St. Helen's Improvement Act, 1869, the corporation obtained power *inter alia* to purchase on arbitration terms the undertaking of the gas company supplying the borough, and also power to raise money for the purpose. In the session of 1870, the gas company promoted a bill to increase their capital and enlarge the area of supply. The corporation in pursuance of a resolution of ratepayers, opposed the Bill, which they contended would have the effect of preventing the purchase of the gas undertaking by increasing the price. The relators, who were two ratepayers, sought to restrain this action of the corporation, and to prevent their applying the borough rates for that purpose. STUART, V.-C., refused the injunction (*Attorney-General* v. *St. Helen's Corporation*, [1870] W. N. 150).

Standing Orders.

By the Standing Orders of each House of Parliament, Bills for the establishment of gasworks are placed in the first class of private Bills (S. O. 1, L. & C.). Besides the ordinary subjects to be mentioned in notices by advertisement, the lands in or upon which the works are intended to be constructed are to be specified (S. O. 5 L. & C.), and a clause must be inserted in the Bill defining such lands (S. O. 139 L., and 187 C.); and, on or before the 15th day of December immediately preceding the application for a Bill, either for the construction of gasworks or for the construction of works for the manufacture or conversion of the residual products, the promoters must

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serve a notice upon the owner, lessee, and occupier of every dwelling-house situated within 300 yards of the limits within which the works are intended to be constructed (S. O. 15, L. & C.). A copy of every Bill relating to gasworks must also be deposited at the office of the Board of Trade on or before December 21st (S. O. 33, L. & C.).

Winding up of companies.

The powers of the Chancery Division to order winding up extends under the Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 267, to companies and corporations not registered under that Act. Railway companies incorporated by Act of Parliament are excepted, but with that exception the power extends to all companies incorporated by Act of Parliament. In this way a ferry company (*Isle of Wight Ferry Co.* (1865), 2 H. & M. 597), a canal company (*Basingstoke Canal Co.* (1866), referred to L. R. 4 Eq. 198), a telegraph company (*Electric Telegraph of Ireland Co.* (1856), 22 Beav. 471), a dock company (*Exmouth Docks Co.* (1873), L. R. 17 Eq. 181), and a navigation company (*Bradford Navigation Co.* (1870), L. R. 5 Ch. 600), have been ordered to be wound up. The court will make the order, even though an Act of Parliament may be necessary to fully wind up and sell the company's property (*Bradford Navigation Co., supra*). The court has jurisdiction to make an order for the winding-up of a water company, incorporated by registration under the Companies Acts, upon which powers for the public benefit have been conferred by a provisional order of the Board of Trade (made under the Gas and Water Works Facilities Act, 1870 (33 & 34 Vict. c. 70), and afterwards confirmed by a special Act), though it might not be possible to sell the undertaking and property of the company without the authority of an Act of Parliament (*In re Barton-upon-Humber and District Water Co.* (1889), 42 Ch. D. 585). And see *Blaker* v. *Herts and Essex Waterworks Co.* (1889), 41 Ch. D. 399.

Supply of electricity by gas companies.

The Model Gas Bill formerly contained the following clause:

> "36. The company, if they think fit, may, under the provisions of the Electric Lighting Acts, 1882 and 1888, make application for a provisional order or licence to supply electrical energy for public and private purposes, and may apply their funds for the purpose of such application."

Gas companies existing under parliamentary authority, in the absence of a special power to the above effect, have no power to make such application or to apply their funds for that purpose. For an instance where such a company having no special power proceeded successfully by private Bill, see Walker and Wallsend Union Gas Act, 1899.

Where a gas company exists under the authority of the Companies Act, application may be made to alter the provisions of its memorandum of association so as to include the supply of electric energy. The following are instances of such applications: *Colombo Gas and Water Co.*, Jl. of G. L., July 20th, 1896, p. 179; *Hoylake and West Kirby Gas and Water Co.*, *ibid.* 911; *In re Oriental Telephone Co.*, [1891] W. N. 153; *In re Rugeley Gas Co.*, [1899] W. N. 127; and *In re Harrington Gas Co.*, Jl. of G. L., April 3rd, 1900, 879; *In re Uppingham Gas Co.*, Electrician, June 28th, 1901, p. 384; *Hessle Gas Co.*, Jl. of G. L., February 9th, 1904, p. 348; June 14th, 1904, p. 789.

When companies authorised works must comply with building Acts and byelaws.

Where gas, water, or other works are authorised to be erected by an Act of Parliament, the question often arises whether the company are bound to conform to building Acts or byelaws locally in force relating to buildings, *e.g.*, the building line. The guiding principle is that the company must conform to the building Acts or byelaws, unless there is something in the private Act which is inconsistent with the general provision of the building Acts or byelaws. Where a railway company was empowered to make a subway "with all necessary works connected therewith" upon certain scheduled land lying within the limits of deviation delineated on the deposited plans, and described in the deposited books of reference, and the company built within the limits of deviation, a station—which was found by the magistrate to be necessary and convenient for the purposes of the railway

—and a part of which projected beyond the line of buildings, it was held that the effect of the special Act was to repeal s. 75 of the Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102), so far as related to the station (*City and South London Rail. Co.* v. *London C. C.*, [1891] 2 Q. B. 513). So, where the school board for London, acting under the powers of a provisional order confirmed by Parliament, compulsorily acquired a piece of land for the purpose of providing school accommodation, the land being defined by metes and bounds in the schedule to the special Act, and the school board built upon the land a school with a playground attached, the external fence of the playground being within twenty feet of the centre of a public highway, it was held that the provisions of ss. 4 and 6 of the Metropolis Management and Buildings Acts Amendment Act, 1878, which forbade the erection, without the consent of the Metropolitan Board of Works, of any building, wall, or fence within twenty feet of the centre of a highway, were inconsistent with the statutory powers given to the school board (by ss. 18, 19 of the Elementary Education Act, 1870 (33 & 34 Vict. c. 75)) for the acquisition and user of the land, and that the school board could therefore use the land for the statutory purposes for which it was acquired free from the restrictions imposed by those provisions (*London C. C.* v. *School Board for London*, [1892] 2 Q. B. 606). See now the London Building Act, 1894 (57 & 58 Vict. c. ccxiii.), which repeals ss. 4 and 6 of the Act of 1878 and substitutes new provisions. See also *London and Blackwall Rail. Co.* v. *Limehouse District Board of Works* (1856), 26 L. J. Ch. 164.

Sect. 93 of the Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), provides that nothing therein or in the special Act contained shall be deemed to exempt the undertakers "from any act for improving the sanitary conditions of towns and populous places which may be passed in the same session of Parliament in which the special Act is passed, or any future session of Parliament." A water company by their special Act, passed in 1897, and incorporating the Waterworks Clauses Act, 1847, were empowered to make and maintain "in the lines and situations and according to the levels shown on the deposited plans and sections the waterworks hereinafter described with all proper and necessary embankments," etc. Among the waterworks described was "a high-service water tower situated in the field or enclosure No. 1117 on the Ordnance Map (edition of 1888) of the said parish . . ." Shortly after the special Act came into force the local authority of the district, under the powers given by s. 157 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), made byelaws providing that any person intending to erect a building should give the local authority notice of his intention, and of the date on which the building was to be commenced, and deliver to them plans and sections of it, and a description of the materials with which it was to be constructed:—*Held*, with respect to the erection of the water tower authorised by the special Act, that s. 93 of the Waterworks Clauses Act, 1847, had not the effect of exempting the water company from the provisions of the Public Health Act, 1875, and that the special Act contained no provision inconsistent with the Act of 1875, and, therefore, that the company were bound to comply with the byelaws made by the local authority under that Act (*Uckfield, R. D. C.* v. *Crowborough District Water Co.*, [1899] 2 Q. B. 664).

So where a gas company were authorised to erect on lands specified in the schedule to the Act, "such gasworks, whether for the manufacture, storing, and supply of gas or otherwise as they think fit," and in February, 1899, they proceeded on such land to build a purifying house, the external walls of which were within twenty feet of the centre of a highway, it was held (on a case stated) that the gas company's Act contained no powers inconsistent with the London Building Act, 1894 (57 & 58 Vict. c. ccxiii.), and that the company could only build subject to that Act (*London C. C.* v. *Wandsworth and Putney Gas Co.* (1900), 82 L. T. 562). *Cf. Charing Cross and Strand Electricity Supply Corporation* v. *Woodthorpe* (1903), 88 L. T. 772.

See also *London C. C.* v. *South Metropolitan Gas Co.*, Jl. of G. L., November 22nd, 1898, p. 1168, where the Greenwich magistrate imposed a fine on the defendants in connection with the erection of a coal shed at

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Rotherhithe gasworks within the prescribed distance of twenty feet from the centre of a highway and without having first obtained the consent of the council.

A metropolitan district board of works having parliamentary power to supply electric energy and to execute works for the purpose, proceeded to construct street boxes or chambers under a street for the purpose of electric lighting without serving the building notice respecting it required by the London Building Act, 1894. They contended that this Act did not apply, as their special Act of 1892 was inconsistent therewith. The magistrate held that the Acts were not inconsistent, and imposed a fine. He also held that the street boxes were "buildings, structures or works" within the Building Act (*Crow* v. *Whitechapel Board of Works*, Jl. of G. L., June 12th, 1900, p. 1558; Electrician, June 8th, 1900, p. 263). On a case stated a Divisional Court confirmed this decision (84 L. T. 595).

A water company acquired compulsorily in 1853 a piece of land with power to construct waterworks. They constructed certain works upon it, and, from time to time, added thereto. In 1897 additional pumping accommodation having become necessary, they resolved to build, on a vacant portion of this piece of land, an engine-house in connection with their existing works. The local authority insisted that plans for such buildings should be deposited in accordance with the requirements of their byelaws, and that the building proposed to be erected was contrary to the provisions of the Public Health (Buildings in Streets) Act, 1888 (51 & 52 Vict. c. 52). The water company contended that by their private Act of 1852 they were in effect exempted from the operation of the provisions of the Act of 1888. The water company then commenced an action in the High Court, claiming a declaration that they were entitled to erect an engine-house and other buildings without the consent of the defendants. Thereupon the local authority took proceedings before the justices, who found that the plaintiff's building did project beyond the front main wall of the house or building on either side, and inflicted a fine. Afterwards, on a summons in the action to have the question of law raised by the defence decided before the action was further proceeded with, STIRLING, J., refused to interfere by way of injunction or declaration of right, holding that the legislature had provided in such cases for a mode of procedure before justices (*Grand Junction Waterworks Co.* v. *Hampton U. D. C.*, [1898] 2 Ch. 331).

Interpretations in this Act.

And with respect to the construction of this Act, and any Act incorporated therewith, be it enacted as follows:

"Special Act:"

"Prescribed:"

"The lands:"

"The undertaking:"

"The undertakers."

2. The expression "the special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed authorising the construction of gasworks, and with which this Act shall be so incorporated as aforesaid; and the word "prescribed," used in this Act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word occurs shall be construed as if, instead of the word "prescribed," the expression "prescribed for that purpose in the special Act" had been used; and the expression "the lands" shall mean the lands which shall by the special Act be authorised to be taken or used for the purposes thereof; and the expression "the undertaking" shall mean the gasworks, and the works connected therewith, by the special Act authorised to be so constructed; and the expression "the undertakers" shall mean the persons by the special Act authorised to construct the gasworks.

Interpretations in this and the special Act.

3. The following words and expressions in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

Number:

Words importing the singular number only shall include the plural number, and words importing the plural number only shall include also the singular number:

Gender:

Words importing the masculine gender shall include females:

"Person:"

The word "person" shall include corporation, whether aggregate or sole:

"Lands:"

The word "lands" shall include messuages, lands, tenements, and hereditaments, or heritages of any tenure:

"Street:"

The word "street" shall include any square, court, or alley, highway, lane, road, thoroughfare, or public passage or place within the limits of the special Act:

In *Maddock* v. *Wallasey Local Board* (1886), 50 J. P. 404, it was held that this definition did not include an open tract of land above mean high-water mark which belonged to the owner of enclosed land fronting the shore. It appeared that the inhabitants had been accustomed to pass and repass along this shore, and at high tide had been in the habit of going upon the tract of land in question, but had not crossed in any defined track.

See further a decision of magistrates reported 74 J. P. 567.

A clause is commonly inserted in recent gas Acts authorising the breaking up of streets, etc., not dedicated to the public, on the application of an owner or occupier of premises abutting or in course of building.

"The gasworks:"

The expression "the gasworks" shall mean the gasworks and the works connected therewith by the special Act authorised to be constructed:

"Gas rate:"

The expression "gas rate" shall include any rent, reward, or payment to be made to the undertakers for a supply of gas:

"Month:"

The word "month" shall mean calendar month:

At common law, the primary meaning of "month" is lunar month. See *Bruner* v. *Moore*, [1904] 1 Ch. 305, and the cases there cited.

"Superior courts:"

The expression "superior courts," where the matter submitted to the cognizance of the superior courts arises in England or Ireland, shall mean her Majesty's superior courts of record at Westminster or Dublin, as the case may require . . . ; and where such matter arises in Scotland, it shall mean the court of session:

Certain words here omitted are repealed by the Statute Law Revision Act, 1891 (54 & 55 Vict. c. 67).

"Oath:"

The word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath:

See Oaths Act, 1888 (51 & 52 Vict. c. 46).

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"County:" The word "county" shall include riding or other division of a county having a separate commission of the peace; and in Scotland . . . (*a*) any . . . (*b*) division of a county . . . (*a*) having a separate sheriff; and it shall also include county of a city or county of a town:

(*a*) Words omitted repealed by Statute Law Revision Act, 1891 (54 & 55 Vict. c. 67).

(*b*) Words omitted repealed by Statute Law Revision Act, 1893 (56 & 57 Vict. c. 14).

'Justice:" The word "justice" shall mean justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises; and where any matter shall be authorised or required to be done by two justices, the expression "two justices" shall be understood to mean two or more justices met and acting together:

"Two justices:"

Metropolitan police magistrates and stipendiary magistrates may exercise the powers of two justices (2 & 3 Vict. c. 71, s. 14; 11 & 12 Vict. c. 43, s. 33; and 21 & 22 Vict. c. 73, s. 1).

Justices are by the common law disqualified from acting as such in any matter in which they are interested. This rule rests on the maxim that no man shall be a judge in his own cause. In *Dimes* v. *Grand Junction Canal Co.* (1852), 3 H. L. Cas. 759, the House of Lords set aside on this ground a decree of Lord Chancellor COTTENHAM in favour of a company in which he was a shareholder. In some statutes, such as the Companies, Railways, and Lands Clauses Acts of 1845, the justices authorised to act are required to be persons "who shall not be interested in the matter"; but these words have been held to be merely declaratory of the common law (*Wakefield L. B.* v. *West Riding etc. Rail. Co.* (1865), L. R. 1 Q. B. 84). Justices are by certain statutes authorised to act notwithstanding certain remote interests, *e.g.*, by the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 258. No justice is to be disqualified in cases under the Act by reason of his being a member of any local authority or being interested in any rate or fund, out of which any expenses incurred under the Act are to be defrayed; and by the Gasworks Clauses Act, 1871, s. 46, *post*, p. 248, no justice or judge of any county court or quarter sessions shall be disqualified from acting in the execution of that Act by reason of his being liable to the payment of any gas rent or other charge under the Act; and by the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), a justice is not disqualified from acting in the execution of that Act by reason of his being liable to the borough rate. "Where there is no statutory relief the objection remains": *per* MATHEW, J., in *R.* v. *Gaisford*, [1892] 1 Q. B. 381. In this case, one Sayers had for many years been in the habit of depositing earth, seaweed, and manure upon a piece of land at the side of a highway. The defendant being a ratepayer in the parish, and a justice, proposed at a vestry meeting, called by the surveyor of highways to consider the question of the obstruction of the highway, a resolution that Sayers be called upon to remove the heap. Sayers having failed to do this, the surveyor took out a summons for obstruction which was heard before two justices, of whom the defendant was one, and an order was made that the surveyor should remove the heap and sell it, and apply the proceeds to the repair of the highway. The Queen's Bench Division decided that the defendant was disqualified from adjudicating upon the summons, because the part taken by him in moving the resolution afforded ground for a reasonable suspicion of bias on his part, though there might not have been bias in fact, and upon a further ground that, as a ratepayer, he was pecuniarily interested in the result of the summons. The second ground of this decision is, however, open to question for it appears to lose sight of s. 2 of the Justices of the Peace Act, 1867. See the authorities summarised in

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Leeson v. *General Council of Medical Registration and Education* (1889), 43 Ch. D. 366. On the question of bias (or the possibility or probability of bias), apart from pecuniary interest, see *R.* v. *Milledge* (1879), 4 Q. B. D. 332; *R.* v. *Meyer* (1875), 1 Q. B. D. 173; *R.* v. *Cumberland* (1888), 58 L. T. 491; *R.* v. *JJ. Weymouth* (1879), 4 Q. B. D. 394; *R.* v. *JJ. Huntingdon* (1879), 4 Q. B. D. 522; *R.* v. *JJ. Lancashire* (1880), 6 Q. B. D. 168; *R.* v. *Handsley* (1881), 8 Q. B. D. 383; *R.* v. *JJ. Great Yarmouth* (1882), 8 Q. B. D. 525; *R.* v. *Lee* (1882), 9 Q. B. D. 394; *R.* v. *Henley*, [1892] 1 Q. B. 504; *Allinson* v. *General Medical Council*, [1894] 1 Q. B. 750; *R.* v. *Huggins*, [1895] 1 Q. B. 563; *R.* v. *JJ. London* (1896), 60 J. P. 726; *R.* v. *Burton*, [1897] 2 Q. B. 468; *R.* v. *JJ. Sunderland*, [1901] 2 K. B. 357; *Ex parte Wilder* (1902), 66 J. P. 761; *R.* v. *JJ. Lancashire* (1906), 70 J. P. 337; *R.* v. *Woodhouse*, [1906] 2 K. B. 501; on appeal, *sub nom. Leeds Corporation* v. *Ryder*, [1907] A. C. 420; *R.* v. *JJ. London* (1908), 72 J. P. 137; *R.* v. *JJ. Middlesex*, *Times*, April 7th, 1908. Since even bias, or the possibility of bias, will disqualify, it follows that pecuniary interest, even though remote (*R.* v. *Recorder of Cambridge* (1857), 8 E. & B. 637), will disqualify. Interest as a shareholder in a railway company was held to disqualify a justice from acting as such in the enforcement of its byelaws (*R.* v. *Hammond* (1863), 9 L. T. 423; *cf.* *R.* v. *Mackenzie*, [1892] 2 Q. B. 519; *R.* v. *Burton*, *supra*). Where a justice had endeavoured to bring about a settlement between the parties in the case of an assault, and was a surgeon attending the person assaulted, and was subpœnaed as a witness, the court set aside a writ of prohibition which had been obtained to prohibit him from sitting at the hearing (*R.* v. *Farrant* (1887), 20 Q. B. D. 58; and see *R.* v. *JJ. Surrey* (1852), 21 L. J. M. C. 195). Where the interest of the justice is known to the parties, it may be waived tacitly or otherwise (*R.* v. *Cheltenham Commissioners* (1841), 1 Q. B. 467; *Wakefield L. B.* v. *West Riding, etc. Rail. Co.* (1865), L. R. 1 Q. B. 84; *R.* v. *JJ. Antrim*, [1895] 2 I. R. 603). A justice of the peace becomes disqualified by bankruptcy (46 & 47 Vict. c. 52, s. 32; and see 53 & 54 Vict. c. 71, s. 9), and by corrupt practice at elections (46 & 47 Vict. c. 51, s. 38). The position of clerk to justices is incompatible with the office of justice of the peace (*R.* v. *Douglas*, [1898] 1 Q. B. 560).

"Sheriff:"

The word "sheriff" shall mean the sheriff depute of the county . . . (*a*) in Scotland . . . (*b*) in which the matter submitted to the cognizance of the sheriff arises, and shall include the substitutes of such sheriff depute . . . (*b*).

(*a*) Words omitted are repealed by the Statute Law Revision Act, 1893 (56 & 57 Vict. c. 14).

(*b*) Words omitted are repealed by the Statute Law Revision Act, 1891 (54 & 55 Vict. c. 67).

"Quarter sessions."

The expression "quarter sessions" shall mean quarter sessions as defined in the special Act; and if such expression be not there defined it shall mean the court of general or quarter sessions of the peace which shall be held at the place nearest to the gasworks, or the principal office thereof, for the county or place in which the gasworks are situate, or for some division of such county having a separate commission of the peace.

As to the interpretation generally of words and phrases used in Acts of Parliament, see the Interpretation Act, 1889 (52 & 53 Vict. c. 63)—"An Act for consolidating enactments relating to the construction of Acts of Parliament and for further shortening the language used in Acts of Parliament." This Act supersedes the earlier Act of 13 & 14 Vict. c. 21, having a like object.

Where an interpretation clause provides that a word shall "include" so and so, the meaning of the word is not necessarily confined to what it is to include, but may be much more extensive. See *per* Blackburn, J., in

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Ex parte Ferguson (1871), L. R. 6 Q. B., at p. 291, and see *Robinson* v. *Barton-Eccles L. B.* (1883), 8 App. Cas. 798.

Where an explosion occurred in the course of a manufacture upon premises which were insured against fire, but with a condition that the insurers would not be responsible for loss or damage by explosion, except for such loss or damage as should arise from explosion by gas, the word "gas" was held by the court to mean gas used for illuminating purposes, whether manufactured from oil or coal, and not to include an inflammable and explosive vapour envolved in the process of extracting oil from shoddy (*Stanley* v. *The Western Insurance Co., Ltd.* (1868), L. R. 3 Ex. 71).

Gas shares, although in a company holding land for the purposes of their undertaking, were held not to be within the Mortmain Act, 9 Geo. 2, c. 36, which declared that all gifts, etc., of lands, tenements, or hereditaments, or of any estate or interest therein, or of any charge or incumbrance affecting any lands, tenements, or hereditaments made otherwise than prescribed by the Act, should be void (*Sparling* v. *Parker* (1846), 9 Beav. 457). See now the Mortmain and Charitable Uses Acts of 1888 (51 & 52 Vict. c. 42) and 1891 (54 & 55 Vict. c. 73), the former of which repeals (for the most part) the Act of Geo. 2, and substitutes other provisions. Metropolitan 3½ per cent. stock issued under the Metropolitan Board of Works (Loans) Act, 1869 (32 & 33 Vict. c. 102), involves an interest in land within the meaning of the Act of 1888, s. 10 (iii.) (*In re Crossley, Birrell* v. *Greenhough*, [1897] 1 Ch. 928). See further the notes to s. 7 of the Companies Clauses Consolidation Act, 1845, *post*. The Companies Clauses Consolidation Act, 1845, s. 7, and the Companies (Consolidation) Act, 1908, s. 22, respectively provide that shares in the undertaking or company shall be personal estate, and shall not be of the nature of real estate.

Citing the Act.

And with respect to citing this Act or any part thereof, be it enacted as follows:

Short title of the Act.

4. In citing this Act in other Acts of Parliament and in legal instruments it shall be enough to use the expression "The Gasworks Clauses Act, 1847."

Form in which portions of this Act may be incorporated in other Acts.

5. For the purpose of incorporating part only of this Act with any Act hereafter to be passed, it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act, with the exception of the clauses so described, shall be incorporated with such Act; and thereupon all the clauses of this Act so incorporated shall, save so far as they are expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.

Section 1 of the Gasworks Clauses Act, 1871, provides that that Act and this Act shall be construed together as one Act, and the provisions of that Act are to repeal and supersede any inconsistent provisions in this Act. See cases cited in notes to s. 3 of the Act of 1871, *post*, p. 220.

Laying of pipes.

And with respect to the breaking up of streets for the purpose of laying pipes, be it enacted as follows:

Power to break up streets, etc.,

6. The undertakers, under such superintendence as is hereinafter specified, may open and break up the soil and pavement of the several streets and bridges within the limits of the special Act, and may open

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under superintendence, and to open drains.

and break up any sewers, drains, or tunnels within or under such streets and bridges, and lay down and place within the same limits pipes, conduits, service pipes, and other works, and from time to time repair, alter, or remove the same, and also make any sewers that may be necessary for carrying off the washings and waste liquids which may arise in the making of gas, and for the purposes aforesaid may remove and use all earth and materials in and under such streets and bridges, and they may in such streets erect any pillars, lamps, and other works, and do all other acts which the undertakers shall from time to time deem necessary for supplying gas to the inhabitants of the district included within the said limits, doing as little damage as may be in the execution of the powers hereby or by the special Act granted, and making compensation for any damage which may be done in the execution of such powers.

"Street."

The word "street" is defined by s. 3. This definition differs from that in the Public Health Act, 1875, and from that in the Metropolis Management Act, 1855, and in other public Acts. Discrimination is therefore necessary in the consideration of cases relating to these other Acts.

See also as to the meaning of the word "street" the cases collected in the note under s. 7, *post*, p. 180.

It has been held under the corresponding section (s. 28) of the Waterworks Clauses Act, 1847, that the undertakers are not authorised to cut through plates lying on the top of a girder railway bridge carrying a public road for the purpose of suspending their pipes to the girders (*Glasgow* (*Lord Provost, etc.*) v. *Glasgow and S. W. Rail. Co.*, [1895] A. C. 376. They may, however, dig a trench and lay pipes resting on a bridge (see *Taff Vale Rail. Co.* v. *Cardiff Gas Light and Coke Co.* (1907), 71 J. P. 350).

Highway presumably extends to space between fences.

A highway presumably extends over the entire space between the fences which is capable of being used for passage. See and compare the following cases as to the presumption and the conditions to which it is subject: *R.* v. *United Kingdom Telegraph Co.* (1862), 2 B. & S. 647; *Turner* v. *Ringwood Highway Board* (1870), L. R. 9 Eq. 418; *Nicol* v. *Beaumont* (1883), 53 L. J. Ch. 853; *Harris* v. *Northamptonshire County Council* (1897), 61 J. P. 599; *Locke-King* v. *Woking Urban District Council* (1897), 77 L. T. (N.S.) 790; *Friern Barnet Urban District Council* v. *Richardson* (1898), 62 J. P. 547; *Neeld* v. *Hendon Urban District Council* (1899), 63 J. P. 724; *Evelyn* v. *Mirrielees* (1900), 17 T. L. R. 152; *Belmore* (*Countess of*) v. *Kent County Council*, [1901] 1 Ch. 873; *Attorney-General* v. *Esher Linoleum Co.*, [1901] 2 Ch. 647; *Conservators of River Thames* v. *Dennis*, *Times*, November 1st, 1902; *Ford* v. *Harrow Urban District Council* (1903), 67 J. P. 248; *Harvey* v. *Truro Rural District Council*, [1903] 2 Ch. 638; *Plumbley* v. *Lock* (1902), 67 J. P. 237; *Attorney-General* v. *Perry*, [1904] 1 I. R. 247; *Offin* v. *Rochford Rural District Council*, [1906] 1 Ch. 342; and *Attorney-General* v. *Moorsom-Roberts* (1908), 72 J. P. 123. It would not ordinarily include an open and unenclosed ditch by the side of it (*Field* v. *Thorne* (1869), 33 J. P. 727); although there is no rule of law that a ditch running alongside a highway cannot be dedicated as part of the highway merely because it is not part of the roadway and cannot be used by the public for purposes of passage (*Chorley Corporation* v. *Nightingale*, [1907] 2 K. B. 637). Nor would it include any part of the unenclosed land adjoining a highway which had never been dedicated as part of the highway though within fifteen feet of the centre of the road (*Easton* v. *Richmond Highway Board* (1871), L. R. 7 Q. B. 69). And see *Robinson* v. *Cowpen Local Board* (1894), 63 L. J. Q. B. 235.

As to laying pipes in the streets of the metropolis, see further the Metropolis Gas Act, 1860 (23 & 24 Vict. c. 125), ss. 49, 50, *post*, pp. 286, 288.

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NOTE.

When the breaking up of streets, etc. without parliamentary authority will be restrained by injunction, etc.

The breaking up without parliamentary authority of public streets, roads, pavements or footways, in order to lay down, repair or replace, gas or water pipes is a nuisance at common law, and may be made the subject of indictment. It is another question whether injunction will be granted to restrain such breaking up, and the cases go to show that injunction will not readily be granted, especially if the alleged nuisance be trivial and transient. Prosecutions under s. 72 of the Highway Act, 1835 (5 & 6 Will. 4, c. 50), have also been sustained. By the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 144, and s. 25 of the Local Government Act, 1894, the powers of surveyors of highways and of vestries under the Highway Act, 1835, and Acts amending the same, are vested in urban and rural authorities. See further, *post*, p. 169. In what follows, the leading cases on this question of breaking up streets will be noticed.

Leading cases on the above subject.

In *Attorney-General* v. *The Sheffield Gas Consumers Co.* (February, 1853), 3 De G. M. & G. 304, it appeared that a company was incorporated by Act of Parliament for supplying the town of Sheffield with gas, and that afterwards a joint stock company was formed for the same purpose, and that they, with the permission of the board of surveyors of highways, commenced to break up the streets for the purpose of laying down their pipes. Upon an information filed by the Attorney-General at the relation of the parliamentary company, and a bill by the parliamentary company against the joint stock company, charging a public nuisance and private damage, the court refused to restrain the joint stock company from proceeding with their works, upon the ground that the damage was trivial and temporary, and further that the same principles will guide the interference of the court by injunction in the case both of public and private nuisance, viz., the inadequacy of the legal remedy for injury to property. It appeared in the course of the proceedings that the parliamentary company were also proceeding by indictment against the joint stock company. Lord Justice TURNER in the course of his judgment said: "As to the laying down the pipes, that appears to me to be a case of merely temporary inconvenience. At the utmost, according to the evidence, it is a case of two or three days. But when these pipes are laid down, the work which has been done is entirely completed, it is done once for all. . . . All these are nuisances in a greater or less degree, and with reference to what has been said, as to the continual taking up of the pavement, which would be consequent on those pipes having been laid down, it is true that there may be, and probably will be, some inconvenience resulting from that, but it is an inconvenience which will not affect the general body of the inhabitants of Sheffield. It is an inconvenience which may occur from time to time, probably in a much less degree than is anticipated by the parties. I think that inconvenience will be temporary, applying only to a particular part of the town, not affecting the general body of the inhabitants to any great extent. And it is not to be left out of consideration in determining this question, that to some extent the law has provided a remedy in respect of these inconveniences. There is some remedy under the Highway Act, and there are boards of surveyors here having the control of these streets who concur in these measures being taken, and as to any injury which any private individual may sustain, the law is open to him by an action on the case." The Lord Chancellor (Lord CRANWORTH) in the course of his judgment said: "It may be that the tearing up of the pavement is not, even for the purpose of laying down gas pipes, anything that was ever in contemplation, and that it cannot be done without the authority of the legislature, or some other competent authority. . . . If I thought the question turned on the decision of that point, I should probably have wished the matter to stand over till after the trial of the indictment. Not thinking so, but thinking that the evil, if any, which does exist is of such a very transient nature, that at no one spot, or to no one individual, can it be said to be more than a passing and almost imaginary evil, I am of opinion that no case is made out for restraining these parties." Lord Justice KNIGHT BRUCE *dissented*.

In *R.* v. *Sheffield Gas Consumers Co.* (June, 1853), 18 Jur. 146, n., a gas company were indicted for obstructing a highway by digging and keeping open a trench upon and along the same. The company was registered as

Note.

Breaking up of streets—*continued.*

a joint stock company and had no parliamentary powers. They had opened a trench in one of the public streets of Sheffield for the purpose of laying down their mains along the middle of the street, and they had obtained the permission of the highway board, as well as of the commissioners appointed under a local Act for lighting the town. It was admitted that the defendants had used reasonable despatch in laying down the pipes and restoring the road, but during the execution of the works the street was impassable. A verdict was entered for the Crown, leave being reserved to move to enter a verdict for the defendants. A rule *nisi* having been granted, the same was afterwards discharged, Lord Campbell, C.J., remarking, "The defendants should follow the usual course—submit their case to Parliament, and obtain the necessary powers under the necessary restrictions. Section 6 of the Gasworks Clauses Act, 10 & 11 Vict. c. 15, gives a power to break up the streets, but under great restrictions, limitations, and qualifications. The company claims a common law right to do the same thing unfettered by any restrictions."

In *R.* (*on the prosecution of the Stoke, Fenton, and Longton Gas Co.*) v. *The Longton Gas Co., Ltd.* (1860), 2 E. & E. 651; *S. C. sub nom. R.* v. *Knight*, 6 Jur. (n.s.) 601, the Court of Queen's Bench again held that it is an indictable nuisance to obstruct or to employ others to obstruct a public highway or footway, by placing earth and bricks thereon, taking up the pavement, and opening trenches for the purpose of laying down service pipes for the supply of gas from public mains to private houses, unless those who do or authorise such acts have parliamentary powers for the purpose; and further that such acts cannot be justified by the occupiers of the houses as an exercise of the right of every householder to make such a temporary obstruction of a highway or footway as may be necessarily incident to the enjoyment of his property. In this case it appeared that the Act of the improvement commissioners was passed in 1839, and that they were charged with certain duties as to public lighting, with power to contract. Soon after the passing of that Act the prosecuting company were formed under deed of settlement, and commenced and continued to supply gas both for public and private lighting in the town of Longton (the commissioners contracting with them for the former), and on June 14th, 1858, they obtained a private Act. On June 5th, 1858, the defendant company were established under the Joint Stock Companies Act, 1858, and before that company had commenced to lay any mains or pipes, the commissioners, rejecting the tender of the old company whose latest contract for the public supply of gas had expired, entered into a contract with the defendant company (through one of their directors authorised for the purpose) "to remove bricks and stones and cut trenches of sufficient width and depth and in the directions required for receiving the mains and service pipes in and throughout the town of Longton," and to fill in, etc., and "do as little damage as might be to the streets, roads and ways of Longton aforesaid, and the pavements and channels thereof, and as far as possible avoid injuring any gas or water pipes of other companies, or creating or causing any nuisance or annoyance whatever to the inhabitants of Longton or others in executing the said works." The defendants used all reasonable despatch in digging the trenches and laying down the mains and pipes, and in restoring the footpaths and pavements. Before doing the work the defendants had obtained the consent of the board of surveyors of highways of the town of Longton, and the approval and consent of the inhabitants of Longton in public meeting assembled, and the consent and licence of the lord of the manor which included the town of Longton, and the service pipes were laid at the request and by the direction of the owners of the houses, and it was found "that they had been so laid down carefully, without creating any unnecessary nuisance." Cockburn, C.J., in giving judgment, said: "We find no authority according to which so wide and large an exception to the general rule is established as would allow either a private person or a body acting at the request of private persons to open the streets for the purpose of supplying private houses with water or gas from sources from which a supply of water or gas may be procured. . . . The case does not seem to us to fall within what may be called the ordinary incidents and rights which, in common sense and from common use, are understood to appertain to the enjoyment of property. On

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NOTE.

Breaking up of streets—*continued.*

the contrary, such a right as is here claimed, of interfering with the streets, is never exercised except under the authority of Acts of Parliament conferring special powers, with great care and under proper control in the case of gas, by placing the companies supplying it under the provisions of the General Gasworks Clauses Act, according to which the parties are subjected to wholesome restrictions and to the control of the magistrates. We think, therefore, that the obstructions in question are indictable, and that the conviction was right, and the verdict must be entered accordingly."

In *Goldsmid* v. *Tunbridge Wells Improvement Commissioners* (1866), L. R. 1 Ch. 349 (a case relating to the pollution of a stream), Lord Justice TURNER observed: "I adhere to the opinion which was expressed by me and by the Lord Chancellor in *Attorney-General* v. *Sheffield Gas Consumers Co.*, that it is not in every case of nuisance that this court should interfere. I think that it ought not to do so in cases in which the injury is merely temporary and trifling; but I think that it ought to do so in cases in which the injury is permanent and serious; and in determining whether the injury is serious or not, regard must be had to all the consequences which may flow from it." See also *Attorney-General* v. *Preston* (*Mayor of*) (1896), 13 T. L. R. 14.

In *Attorney-General* v. *Cambridge Consumers Gas Co.* (1868), L. R. 4 Ch. 71, the suit was commenced by information and bill, the relators and plaintiffs being the Cambridge University and Town Gaslight Company, which were empowered by various Acts or Parliament (commencing 4 Will. 4), which incorporated the general Act of 1847. By the Cambridge Improvement Act of 28 Geo. 3, certain commissioners were appointed in whom were vested the streets with power to order any of the pavements to be taken up, and to order the streets to be lighted and to contract, etc. By a contract between the plaintiffs and the commissioners, dated May 25th, 1854, the plaintiffs agreed to light the public streets of Cambridge for a term of fourteen years, from June 1st, 1854, and they were empowered to break up any street for the purpose of their contract. The plaintiffs purchased land, erected buildings, and laid down twenty miles of main pipes, and nearly 3,000 private service pipes, and erected 660 street lamps. On December 12th, 1867, the defendant company was registered as a limited company, and the commissioners made a contract with them (they having made a lower tender than the plaintiffs) for fourteen years from June 1st, 1868. The contract purported to empower the defendants to break up streets and lay down gas pipes. Upon their commencing to do so, the present information and bill was filed praying for an injunction. After the suit was at issue but before the hearing, the contract was rescinded; but the defendants still claimed to go on laying their pipes for the purpose of supplying private houses. Numerous affidavits from heads of colleges and others were filed by the plaintiffs to show injury and inconvenience from the operations of the defendants. The injunction was refused, and the decision in the *Sheffield Case* was followed. PAGE WOOD, L.J., in the course of his judgment remarked (p. 80): "Nothing that we are now doing, nor any sanction which we are now giving to that decision, holds out anything in the least contrary to that which was decided by the Court of Queen's Bench in *R.* v. *Longton Gas Co.*, where it was held, upon grounds in which I entirely acquiesce, that to say that any private individual or company may break up the pavements for the purpose of laying down gas pipes or water pipes or of making communications with the gas pipes or water pipes of another company without subjecting themselves to an indictment, would be to create confusion and discomfort to the inhabitants of a town. I agree that *Attorney-General* v. *Sheffield Gas Consumers Co.* (1853), 3 De G. M. & G. 304, must be taken upon its own circumstances; but it rests upon principles well established. One of them is this, that where the court interferes by way of injunction to prevent an injury in respect of which there is a legal remedy, it does so upon two grounds, which are of a totally distinct character; one is that the injury is irreparable, as in the case of cutting down trees, the other that the injury is continuous, and so continuous that the court acts upon the same principle as it used in older times with reference to bills of peace, and restrains the repeated acts which could only result in incessant actions, the continuous character of the wrong making it grievous and intolerable. As an illustration of this class of

NOTE.

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case, I may refer to *Soltau* v. *De Held* (1851), 2 Sim. (N.S.) 133, where the annoyance from the ringing of the bell was in itself slight, but it was so continuous that the court thought fit to arrest the nuisance *brevi manu*, and save the complainant all further annoyance. If, therefore, in the present case it had been made out that there was, either to the public, or to the owners of property adjoining the streets, such a continuous injury, an injunction would be granted, and we must accordingly look narrowly at the evidence, as the judges did in *Attorney-General* v. *Sheffield Gas Consumers Co.* (1853), 3 De G. M. & G. 304, to learn the amount of continuous injury which is likely to be inflicted. . . . In the present case, any member of the town has it in his power to proceed by way of indictment, and if the matter had been brought before us at the instance of a large number of inhabitants who had proceeded by way of indictment, and we saw that they would be obliged to have recourse to perpetual indictments, that might take the case out of the authority of *Attorney-General* v. *Sheffield Gas Consumers Co.* But here we have a body of commissioners incorporated from a very early period, consisting of the heads of all the colleges, and representatives of the borough in Parliament, the magistrates, and other persons, who have powers of the largest description over the carriage-way and the pathway, the soil of which is vested in them. Every stone that is dug out is a trespass upon their property, and if they thought it right, as representing the whole town, they might act in this matter. But they do nothing of the kind. We only find that the information is filed at the instigation of a rival gas company. A similar state of circumstances, in *Attorney-General* v. *Sheffield Gas Consumers Co.*, weighed in the decision come to by the learned judges upon the interlocutory motion." SELWYN, L.J., remarked (p. 86): "I agree with the Lord Justice in dissenting entirely from the proposition that the case of *Attorney-General* v. *Sheffield Gas Consumers Co.* has established any such result as has been contended for, namely, a general right for every gas company, without the authority of Parliament, to interfere as they think fit with the streets and public ways of a town. I think that a gas company which undertakes so to proceed without the authority of Parliament is exposed to a great number of perils, and I believe there are many instances in which companies, having tried to proceed without such parliamentary authority, have afterwards found themselves compelled to apply for and obtain such powers."

In *Edgeware Highway Board* v. *The Harrow District Gas Co.* (1874), L. R. 10 Q. B. 92, the declaration stated that a limited company had been formed for the purpose of supplying gas within a certain district, and that they had agreed with the plaintiffs that if the plaintiffs would give the company licence to open a certain public highway within their jurisdiction, the company would make good the surface of the road and would pay the plaintiffs 1*s.* per yard of the highway so opened; that afterwards the limited company were, by the Harrow Gas Act, 1873, dissolved, and a new company incorporated, and that all contracts, etc., entered into by the limited company became vested in the statutory company. Then it was alleged that after such licence was given by the plaintiffs, the highway was opened under such licence for 1,476 superficial yards by the limited company (see the report in 31 L. T. 402), and that neither the limited company nor the defendants had made good the surface of the highway, or paid to the plaintiffs the sum of 1*s.* per yard in respect of the 1,476 yards so opened. The contention of the defendants was (1) that there was no consideration for the agreement, and (2) that it was an agreement to commit a nuisance, and they relied on *R.* v. *Longton Gas Co.* The Court of Queen's Bench held on demurrer that there was good consideration for the agreement, and that the agreement was not illegal, and did not necessarily involve the committing of a nuisance by the company. BLACKBURN, J., said: "I do not think that the licence to open the highway is necessarily a licence to commit an indictable offence. It is quite possible to open the highway within the terms of the agreement without creating a nuisance. It is true that the public cannot use the spot opened, and if the defendants opened too much of the road at one time, it might be a nuisance; but they cannot take the objection that they themselves, by their own fault, might create a nuisance." MELLOR, J., said: "I am satisfied that the allegations on the record do not show that necessarily the licence is one to commit

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Breaking up of streets—*continued.*

an indictable offence"; and LUSH, J., said: "It was said that the agreement is illegal, that the plaintiffs are authorising an indictable offence. But there is nothing to show that this is so; and even if it were, as at present advised, I doubt if the defendants could set up as a defence that the contract is illegal."

In the case of *Corporation of Preston* v. *Fullwood L. B.* (1886), 53 L. T. 718, the plaintiffs brought an action claiming an injunction restraining the defendants from stopping, taking up, or otherwise interfering with the mains, pipes, valves, and works of the plaintiffs, by which the plaintiffs supplied water to the district of Fullwood, a suburb of Preston, of which the defendants were the urban sanitary authority. The case was decided on the pleadings and certain admissions. The acts complained of by the defendants were the entering upon and breaking up the streets for the purpose of laying down, repairing, and restoring mains and water pipes. Among the admissions were the following: "(1) Irrevocable licences have been in fact granted by the defendants, or their predecessors in title, to the plaintiffs to do the acts complained of by the defendants hereinafter specified in some of the streets now vested in the defendants. (2) The plaintiffs have, for a period of twenty years and upwards before action, done the acts complained of, and hereinafter stated, without interruption, on all of the said streets now vested in the defendants, to which the said licences do not extend. (3) The plaintiffs have no parliamentary powers which enable them to do any of the acts complained of." Although the plaintiffs claimed an injunction in the action, the following preliminary question was raised pursuant to an order under R.S.C., O. 34, r. 2, "Whether the plaintiffs have any legal right to break up the streets vested in the defendants?" The plaintiffs relied on *Edgeware Highway Board* v. *Harrow District Gas Co.*, *supra*, and the defendants on *R.* v. *Longton Gas Co.*, *supra*. NORTH, J. (after reviewing most of the cases which have been above mentioned), said: "Under the circumstances I have no difficulty in answering the question, 'Whether the Corporation of Preston have any legal right to break up the streets vested in the defendants,' by saying that they have not shown anything to satisfy me that they have any such legal right, and that, in my opinion, they have none. . . . Such rights as the plaintiffs claim must, in my opinion, necessarily be a nuisance." A further point arose in the course of the case, viz., whether the defendants were estopped by conduct or acquiescence in such a way as to disentitle them to be heard to complain of what had been done. The point, however, was not raised by the pleadings, and the learned judge remarked that he could not deal with it in the absence of pleading raising the point. He pointed out, however, that "any amount of acquiescence could not confer a legal right on the plaintiffs, although it might prevent the defendants getting an injunction," and referred to the case of *Kerr* v. *Corporation of Preston* (1876), 6 Ch. D. 463, on the question of acquiescence.

See also the case of *Stockport District Waterworks Co.* v. *Corporation of Manchester* (1863), cited *ante*, p. 152, in which it was sought to restrain the Corporation of Manchester from supplying water outside their limits; and *Pudsey Coal Gas Co.* v. *Corporation of Bradford* (1873), also cited *ante*, p. 153, in which it was sought to restrain the Corporation of Bradford from supplying gas outside their limits.

Penalties under Highway Act, 1835.

By the Highway Act, 1835 (5 & 6 Will. 4, c. 50), s. 72, it is provided that, "If any person shall . . . or shall cause any injury or damage to be done to the said highway or the hedges, posts, rails, walls, or fences thereof; or shall wilfully obstruct the passage of any footway; or wilfully destroy or injure the surface of any highway . . . every person so offending in any of the cases aforesaid shall for each and every such offence forfeit and pay any sum not exceeding forty shillings, over and above the damages occasioned thereby." In *Hawkins* v. *Robinson* (1873), 37 J. P. 662, a summons was issued under this section of the Highway Act. The complaint was at the instance of the manager of the Aberdare Gas Consumers Company, who were incorporated by Act of Parliament within the then last two years against two of the servants of the Aberdare Old Gas Company, who were a joint stock company, and had been in existence for twenty-two years. The joint stock company obtained the consent of the local board in whom the streets were vested under the Public Health Act, 1848 (11 & 12 Vict. c. 63), s. 68. The act complained of was the cutting of a trench and the laying of a service pipe in the usual way. The surveyor subsequently viewed the spot and found the work done to his satisfaction. The justices dismissed the summons, but stated a case. In the Court of Queen's Bench, COCKBURN, C.J., said: "We think that though the street is under the management of the local board, still the general public are not to be deprived of their general right of passage, and that this proceeding did come within the Act. The local board may, no doubt, under s. 68 of the 11 & 12 Vict. c. 63, authorise the street to be taken up for works authorised by that Act, but this was not an exercise of that power. This case, however, is one in which the magistrate might very properly have inflicted a penalty of one farthing and refused the prosecutor his costs. The case will be remitted, with our opinion that an offence had been committed." In *Wright* v. *Stears*, reported Jl. of G. L., December 14th, 1886, vol. 48, p. 1068, a summons was taken out under s. 72 of the Highway Act, 1835, by the manager of the Pocklington Gas Light and Coke Company (who were established in 1834, and afterwards obtained a provisional order under the Gas and Water Works Facilities Act, 1870) against the contractor and workmen of a rival company having no parliamentary powers, who had obtained a contract for public lighting, and were breaking up streets to lay pipes. A nominal penalty of one shilling was inflicted, with costs.

Penalties under Public Health Act, 1875 (38 & 39 Vict. c. 55).

Sect. 149 of the Public Health Act, 1875, provides that all streets being, or which at any time become highways, repairable by the inhabitants at large within any urban district, and the pavements, stones and other materials thereof, and all buildings, implements and other things provided for the purposes thereof, shall vest in, and be under the control of the urban authority. The same section further enacts that: "Any person who without the consent of the urban authority wilfully displaces or takes up or who injures the pavement stones materials fences or posts of or the trees in any such street shall be liable to a penalty not exceeding five pounds, and to a further penalty not exceeding five shillings for every square foot of pavement stones or other materials so displaced, taken up or injured; he shall also be liable in case of any injury to trees to pay to the local authority such amount of compensation as the court may award."

Injunction to remove pipes laid without authority.

Where water pipes had, without parliamentary authority and without the consent of the owner of the subsoil, been laid in the subsoil of a highway, an injunction to restrain the continuance of the pipes was granted, the owner of the subsoil not being left to his remedy at law, and not being required to establish his right at law. The facts that the soil under the highway was of no value to the owner, and that his motive for applying to the court was not connected with the enjoyment of his land, were held not to be reasons against the granting of the injunction (*Goodson* v. *Richardson* (1874), L. R. 9 Ch. 221; *cf. Selby* v. *Crystal Palace District Gas Co.* (1862), 6 L. T. (N.S.) 790). As to the question of motive, see also *Bradford Corporation* v. *Pickles*, [1895] A. C. 587.

The London and North Western Railway Company constructed gasworks at Crewe primarily for supplying the company's own works. They afforded a supply to all private consumers who desired to obtain it. For the foregoing purposes they laid mains and service pipes in various streets with the assent of the local authority. In 1903 they included in an omnibus Bill, a clause authorising them to exercise the powers of the Gasworks Clauses Act, 1847, with reference to the breaking up of streets. The local authority (who had an electric light provisional order) opposed the Bill. The Bill did not propose to put the company under any of the obligations imposed on statutory gas companies, save as regards the breaking up of streets. A Committee of the House of Lords (Lord Camperdown, chairman) disallowed the clause, Jl. of G. L., May 26th, 1903, p. 529.

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NOTE.

In 1905 the railway company again tried to obtain the clause but it was again struck out by a House of Commons Committee (Col. Bowles, Chairman), see *Times*, May 16th, 1905.

When companies may be liable for the negligence of contractor and his workmen.

Though a person employing a contractor to do a lawful act is not responsible for the negligence or misconduct of the contractor or his servants in executing that act, yet if the act itself is wrongful—as for example, the breaking up of streets, without parliamentary authority, for the purpose of laying or repairing gas or water pipes—the employer is responsible for the wrong so done by the contractor or his servants, and is liable to third persons who sustain damage from the doing of that wrong (*Ellis* v. *The Sheffield Gas Consumers Co.* (1853), 2 E. & B. 767). When a person employs a contractor to do work in a place where the public are in the habit of passing, which work will, unless precautions are taken, cause danger to the public, an obligation is thrown upon the person who orders the work to be done to see that the necessary precautions are taken; and if the necessary precautions are not taken, he cannot escape liability by seeking to throw the blame on the contractor; and no sound distinction in this respect can be drawn between the case of a public highway and a road which may be, and to the knowledge of the wrongdoer probably will in fact be, used by persons lawfully entitled so to do: *per* BRUCE, J., in *Penny* v. *Wimbledon U. D. C.*, [1898] 2 Q. B. 212, affirmed in Court of Appeal, [1899] 2 Q. B. 72. A merely casual or collateral act of negligence such as the negligent leaving of a pickaxe or the like in the road by a workman employed on the work, would be excepted from the above principle. See *per* A. L. SMITH, L.J., [1899] 2 Q. B. at p. 76. The following other cases illustrate the rule that notwithstanding the employment of a contractor, a duty may remain on a company or local authority employing him, towards the members of the public, to prevent any damage arising from the execution of the work of the undertakers: *Pickard* v. *Smith* (1861), 10 C. B. (N.S.) 470; *Gray* v. *Pullen* (1864), 5 B. & S. 970; *Hardaker* v. *Idle U. D. C.*, [1896] 1 Q. B. 335; *Hughes* v. *Percival* (1883), 8 App. Cas. 443; *Black* v. *Christchurch Finance Co.*, [1894] A. C. 48; *The Snark*, [1899] P. 74; *Hill* v. *Tottenham U. D. C.* (1899), 79 L. T. 495, and *Shoreditch Corporation* v. *Bull* (1904), 68 J. P. 415. The defendants, a telephone company, were lawfully engaged in laying telephone wires along a street. They passed the wires through tubes which they laid in a trench under the level of the pavement. The defendants contracted with a plumber to connect these tubes at the joints with lead and solder to the satisfaction of the defendants' foreman, at the sum of 12*s.* per joint. There was evidence that the work was done by the plumber under the supervision of the defendants' foreman, and that one of their men was assisting him in it. In order to make the connections between the tubes, it was necessary to obtain a flare from a benzoline lamp, which could not be done without the application of heat to the lamp. The lamp used for the purpose was provided with a safety-valve. The plumber, for the purpose of obtaining the necessary flare, dipped the lamp into a caldron of melted solder, which was placed over a fire on the footway for the purpose of the work, which was unprotected by any screen or tent. Dipping the lamp into the solder would have been a proper and useful mode of obtaining the flare, provided the lamp had been in good order. The safety-valve of the lamp not being in working order, as the plumber ought to have known, the lamp exploded, with the result that the plaintiff who was passing on the highway was splashed by the molten solder, and thereby injured. In an action by him against the defendants in the City of London Court for damages in respect of the injuries so occasioned to him, the deputy judge held that the plumber was not doing the work as an independent contractor, but under the defendants' supervision and control, and that the defendants were responsible for his negligence as above mentioned:—*Held* (reversing the judgment of a Divisional Court), that the judgment of the deputy judge was right on the grounds, first, that there was evidence that the defendants and the plumber were jointly engaged in the performance of the work under such circumstances as to render the defendants liable for the negligence of which the plumber had been guilty; and, secondly, that, even if the plumber were an independent contractor, the defendants, having authorised the performance upon a highway of work, which from its nature was likely to involve danger to persons using the highway, were bound to take care that those who executed the work for them did not negligently cause injury to such persons (*Holliday* v. *National Telephone Co.*, [1899] 2 Q. B. 392).

Right of support for gas pipes.

The Gasworks Clauses Acts do not contain any provision (such as that contained in s. 22 of the Waterworks Clauses Act, 1847) with regard to minerals. Gas companies are entitled to support for their pipes when laid with the authority of Parliament. The following case illustrates the distinction in this respect between a parliamentary and a non-parliamentary company. In 1874 a limited gas company, acting without any statutory authority, and without the authority of the landowner, but with the permission of the highway authority, laid pipes under the soil of a road set out as a public highway under an Inclosure Act. In 1878 the company obtained a private Act, which incorporated the Gasworks Clauses Acts, 1847 and 1871. The private Act provided for the dissolution of the limited company, and enacted that all the lands, gasworks, easements, mains, pipes, plant, and apparatus placed by, vested in or which were the property of the limited company immediately before the passing of the Act, should be similarly vested in the statutory company, and the statutory company were empowered to maintain the existing gasworks and to lay down and maintain additional mains and pipes. The defendants, the lessees of minerals under and adjacent to the highway under which the plaintiffs had laid their pipes, had, by working the coal thereunder, let down the soil of the highway and caused injury to the plaintiff's pipes:—*Held*, by the Court of Appeal, in an action by the plaintiffs for damages and an injunction, that the plaintiffs were entitled to support for their pipes, and that the landowner was entitled to compensation for the burden thus imposed upon him; that the plaintiffs could therefore recover damages by action for any injury caused to their pipes, while the owner of the minerals could recover compensation, not by a counterclaim, as was set up in this case, but in an arbitration under the Gasworks Clauses Act for the limitation thus put upon the user of his lands (*Normanton Gas Co.* v. *Pope* (1883), 52 L. J. Q. B. 629). The reason of the decision is thus stated by LINDLEY, L.J.: "The next point is that down to 1878, when the Normanton Gas Act was passed, the plaintiffs had no right to put down the pipes and no right of support, or anything of the kind. That Act, by incorporating the Gasworks Clauses Act, 1847, put the plaintiffs into this position that it either left them where they were, in which case the plaintiffs have no right of support and cannot sue, or it has given them a right of support, in which case I am of opinion they are bound to pay compensation. . . . The right of the plaintiffs to support follows from this—that the Act of 1878 gives them a right to keep these mains where they are, and to use and maintain them; and the Gasworks Clauses Act, 1871, imposes upon them the obligation of supplying gas as long as the mains are down. That comes to this, that the mains are lawfully where they are, and no one has any right to injure them. The defendants have injured them, and have thus done a wrong, and have infringed the plaintiffs' rights. It seems to me that the right of support is a necessary consequence of that which the plaintiffs are empowered and compelled to do. The question is whether the Act of 1878 and the incorporated Acts apply to mains laid down before that Act was passed. When we come to criticise the Act of 1878, it is difficult to say that it applies in words to the mains previously laid down. We meet with this difficulty that the Act is ridiculous unless it does. It is impossible to construe these Acts rationally, unless they apply to the old as well as to the new works" (32 W. R., at p. 137). See also *Benfieldside L. B.* v. *Consett Iron Co.* (1887), 3 Ex. D. 54. Where an express statutory right is given to make and maintain something requiring support, the statute, in the absence of a controlling context, must be taken to mean that the right of support shall accompany the right to make and maintain—that if the Act does not provide any means of obtaining compensation for the loss occasioned to the landowner by his having to leave support, this is a strong argument against the legislature having intended to give such right; but if it contains provisions under which compensation can be obtained, it needs a strong context to show that the right to support is not given (*L. & N. W. Rail. Co.* v. *Evans*, [1893] 1 Ch. 16; see also *Glamorganshire Canal Navigation* v. *Nixon's Navigation Co., Ltd.* (1902), 85 L. T. 53; *Clippens Oil Co., Ltd.*

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v. *Edinborough and District Water Trustees,* [1904] A. C. 64; *cf. Metropolitan Board of Works* v. *Metropolitan Rail. Co.* (1869), L. R. 4 C. P. 192; and Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883 (46 & 47 Vict. c. 37). This Act now regulates the vertical and lateral support of "sanitary works" as defined by s. 2. The definition includes works of lighting. See further as to the provisions of the Act, *post,* p. 939.

A gas company entered into an agreement with the proprietor of certain lands to supply his mansion house with gas, and laid down a branch line of pipes through his lands, it being part of the agreement that the pipes should belong to the company. The proprietor subsequently let the shale in his lands to an oil company, which became bound to pay him for surface and other damage caused by their operations, and to relieve him of all claims against him on account thereof. The result of the operations of the oil company was to cause a subsidence of the ground, which damaged the pipes belonging to the gas company. The gas company, with consent of the proprietor for his right and interest, commenced an action against the oil company, praying the sheriff to ordain them to renew, repair, and relay the pipes. The pursuers did not aver that the defenders had worked the minerals in an improper manner:—*Held,* that the defenders were not liable for damage caused by the subsidence, as it was not averred that they had worked the mineral improperly, and as they were under no obligation to the gas company, express or implied, to support the pipes (*Mid and East Calder Gaslight Co.* v. *Oakbank Oil Co.* (1891), 18 Ct. Sess. Cas., 4th series, 788).

Where no provision for compensation, strong argument that rights not taken away or interfered with.

It is a sound canon of construction that an intention to take away property without compensation should not be imputed to a legislature unless it be expressed in unequivocal terms (*Commissioners of Public Works* (*Cape Colony*) v. *Logan,* [1903] A. C. 355, following *Western Counties Rail. Co.* v. *Windsor and Annapolis Rail. Co.* (1882), 7 App. Cas. 178). "The Court has always held that the absence of a provision for compensation to a person whose legal rights are interfered with places a great difficulty in the way of those who contend that such rights are taken away" (*per* NORTH, J., in *Jordeson* v. *Sutton, Southcoates and Drypool Gas Co.,* [1898] 2 Ch. at p. 621). And see *per* Lord CAIRNS in *Hammersmith and City Rail.* v. *Brand* (1869) L. R. 4 H. L. at pp. 215—6, and see *per* BOWEN, L.J., in *London and North Western Rail. Co.* v. *Evans,* [1893] 1 Ch. at p. 28, and *per* Lord HERSCHELL, L.C., in *Bradford Corporation* v. *Pickles,* [1895] 1 Ch. at p. 152.

Injury to pipes by steam-rollers.

A gas company laid down pipes under the surface of certain streets, as they were bound by statute to do, for the purpose of supplying gas to light the streets and houses in the streets. The streets were vested in the defendants, the vestry of the parish, by certain statutes which gave them the authority of the surveyor of highways, and with the duty to repair, but without prescribing any particular mode of repair. The defendants used steam-rollers for the repair of the streets, as being a mode of repair most advantageous to both the ratepayers and the public, but the rollers they used were so heavy as to frequently injure the plaintiffs' pipes, though the pipes were sufficiently below the surface not to have been injured by the ordinary mode of repair if such rollers had not been used:—*Held,* that the plaintiffs were entitled not only to recover damages for the injury which had been done, but also to have an injunction to restrain the defendants from using steam-rollers in such a way as to injure the pipes of the plaintiffs (*Gaslight and Coke Co.* v. *Vestry of St. Mary Abbotts, Kensington* (1885), 15 Q. B. D. 1). A similar action was successfully brought against the Vestry of St. George's, Hanover Square. The jury, in answer to questions put by the judge at the trial, found "that all the pipes were broken by the defendants' roller; that the use of such roller was not reasonable and proper under the circumstances; that it was not used with sufficient care; and that the plaintiffs' pipes were reasonably made and laid." See Jl. of G. L. for April 26th, May 3rd, and December 6th, 1887, vol. 49, pp. 765, 811, and vol. 50, p. 1018. The Court of Appeal in Ireland granted an injunction "against using any steam-roller on any road under which the gas pipes of the plaintiffs have been laid so as to break or injure any pipes then properly laid under such road, regard being had to what, at the time of the laying of such pipes, was the ordinary traffic, and reasonable means of repairing and maintaining the road" (*Alliance and Dublin Consumers Gas Co.* v. *Dublin C. C.*, [1901] 1 I. R. 492, 507).

In a case in the county court decided at Watford by Sir ALFRED MARTEN, K.C., it appeared that the defendant used along the public highways a traction engine weighing about thirteen tons, drawing three trucks, and sometimes two, each weighing from three to four tons without the load, the average load being between five and six tons for each truck. It further appeared that these caused breakages in the pipes of the water company which were laid some at a depth of 3 ft. 6 in., others at 3 ft., and another at the depth of 2 ft. 9 in. For the defendant it was contended that the engine was duly licensed, and that he was using the highway in a lawful manner under the Locomotives Act, 1898, ss. 1, 6 and 7. His Honour gave judgment for the plaintiff company for the amount of the claim (*Colne Valley Water Co.* v. *Bretherton*, Jl. of G. L., May 20th, 1902, p. 1,364).

See also judgment of his Honour Sir HORATIO LOYD at the Wrexham County Court in *Wrexham Public Hall Co.* v. *Wrexham Gas Co.*, as reported in Jl. of G. L., June 23rd, 1903, p. 907. In that case he held that a depth of 18 in. was sufficient, having regard to the time when the pipes were originally laid, and laid it down that the question to be decided was " whether the pipes were laid at a sufficient depth, having regard to the state of the traffic upon the road at the time they were put down. Less than 18 in. he considered insufficient."

A local authority being the owners of the water undertaking in their district, brought an action against the owner of a traction engine for damage caused by the breaking of a water main. The pipes had been laid some thirty years. They were not, judged by the standard of to-day, of the best construction, being cast in such a way that on one side of the elliptical tube the middle was considerably thinner than on the other. They were laid in the soil without cement or other special preparation. They were laid at a depth which left a space of about 20 in. between the crown of the pipe and the crown of the road. Though they had been laid so long they were not corroded or decayed, and were substantially still fit to withstand the pressure of ordinary traffic. The defendants contended that engines such as that complained of had been in use on the road for twenty years, and that it was the duty of the plaintiffs as road authority to adapt the road from time to time to the various kinds of traffic, and relied on *Attorney-General* v. *Scott*, [1905] 2 K. B. 160. The county court judge found the following facts:—(1) No negligence on the part of the defendant or his employees; (2) the pipes were sufficiently strong to withstand the pressure of ordinary traffic; (3) the defendant's engine was by reason of its weight likely to damage pipes constructed and laid in the manner in which the pipes in question were constructed and laid; (4) he also found that there was no negligence on the part of the plaintiffs in their duty as the road authority. The county court judge considered that the case was governed by the decision in *Gaslight and Coke Co.* v. *St. Mary Abbotts*, and gave judgment for the plaintiffs. The Divisional Court, on appeal, affirmed this judgment (*Chichester Corporation* v. *Foster*, [1906] 1 K. B. 167).

A service pipe having been broken by a traction engine or steam-roller, the water company repaired the pipe and brought an action in the county court to recover the expense from the owner. It appeared that the pipe was originally laid at a depth of 2 ft. 6 in. in accordance with the company's rules, and that there had been no negligence on the part of the company. Judgment was given for the company for the amount claimed (*Leatherhead Water Co.* v. *Sears*, Jl. of G. L., June 9th, 1903, p. 679).

A gas company having proposed to lay a main 2 ft. 5 in. below the level of the roadway, the local authority, under s. 9, required them to lay it at 3 ft., and for non-compliance the company were summoned before a magistrate. Much expert evidence was given in the course of the hearing on both sides as to the proper depth at which a gas main would be safe from

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injury by steam-rollers. In the result the magistrate decided that 2 ft. 5 in. was a sufficient depth, and dismissed the summons with 10 guineas costs (*Dublin County Council* v. *Alliance and Dublin Consumers Gas Co.*, Jl. of G. L., Oct. 27th, 1903, p. 233).

A somewhat similar case arose between the same parties when, after many adjournments, and after hearing the evidence of expert witnesses, the magistrate decided that a minimum depth of 2 ft. was sufficient for the main proposed to be laid by the company, and that a minimum depth of nine inches was sufficient in the case of the service pipes (*Alliance and Dublin Consumers Gas Co.* v. *Dublin County Council*, Jl. of G. L., May 24th, 1904, p. 518; June 28th, 1904, p. 971; July 12th, 1904, p. 120; October 25th, 1904, p. 271).

Both the foregoing cases were decided by the same stipendiary magistrate Mr. DRURY, at Kingstown Police Court. Gas mains are made of cast iron, and service pipes of wrought iron, which necessarily bear a great weight (Jl. of G. L., Oct. 18th, 1904, p. 158).

In the session of 1904 there were two instances where, at the instance of road authorities, a clause was inserted requiring pipes to be laid at a depth of not less than 2 ft., namely: Bishop's Stortford Gas Act, ss. 52 (ii.), 54 (ii.), and Harlow and Sawbridgeworth Gas Act, s. 49 (ii.). The Barnard Castle Act of the same session, s. 52, enacted that the road authority should not be answerable for damage caused to the pipes by steam-rolling the highways unless the pipes damaged are laid 2 ft. or more below the surface. And in the Chippenham Act. s. 88 (ii.) a similar provision is made, the depth being 2 ft. 6 in. instead of 2 ft.

The Highways and Locomotives Act, 1878 (41 & 42 Vict. c. 77), provides by s. 32, that "A county authority may . . . make . . . byelaws for granting annual licences to locomotives used within their county." By a byelaw made by the London County Council under that section it was provided that: "No locomotive shall be used on any highway within the county of London until an annual licence for the use of the same shall have been obtained from the council by the owner thereof":—*Held*, that a steam-roller which was not at the time being employed in road-making, but was merely passing through the county to a destination outside, was being "used within the county" within the meaning of the section and the byelaw (*London C. C.* v. *Wood*, [1897] 2 Q. B. 482). (S. 32 of the Act of 1878, above referred to, is repealed by the Locomotives Act, 1898 (61 & 62 Vict. c. 29), *q.v.*). A steam-roller, though lawfully on the highway, may be so used as to be a nuisance, in which case the owners are liable for damage caused thereby, though they have not been guilty of any negligence. It is a question for the jury in each case whether the steam-roller was or was not a nuisance on the occasion complained of. This action was brought to recover damages for injuries to the horse and cart of the plaintiff, through the horse taking fright at a steam-roller which emitted puffs of steam as it was being driven along the highway. The jury found that the steam-roller was a nuisance to the highway used as it was, and in the condition it was, on the occasion. The plaintiff recovered damages (*Jeffrey* v. *St. Pancras Vestry* (1894), 10 The Reports, 554; 63 L. J. Q. B. 618). Where a heavy steam-roller injured a gas main whereby gas escaped into a house and caused injury, it was held that there was evidence of negligence against the local authority (*Driscoll* v. *Poplar Board of Works* (1897), 14 T. L. R. 99).

Agreement in ignorance of rights under general Acts

The Metropolitan Railway Act, 1854, s. 108, provided that water and gas companies might enter upon the railway lands and premises for the purpose of laying any mains or pipes under or over the railway, etc. In 1855 the railway and the gas company entered into an agreement by which the former gave leave, on certain terms, for a gas main to be carried over a bridge at Vine Street. In 1892 the gas company sought to set this agreement aside on the ground that it was entered into by both parties in ignorance of the provisions on the subject contained in the Railways Clauses Act. WILLS, J., refused to set aside the agreement (*Gaslight and Coke Co.* v. *Metropolitan Rail. Co.* (1892), 9 T. L. R. 98).

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Parliamentary authority to disturb the pipes of gas or water companies in certain cases.

By s. 153 of the Public Health Act, 1875, it is enacted, " Where for any purpose of this Act any urban authority deem it necessary to raise sink or otherwise alter the situation of any water or gas pipes mains plugs or other waterworks or gasworks laid in or under any street, they may by notice in writing require the owner of the pipes mains plugs or works to raise sink or otherwise alter the situation of the same in such manner and within such reasonable time as is specified in the notice; the expenses of or connected with any such alteration shall be paid by the urban authority; and if such notice is not complied with the urban authority may themselves make the alteration required: Provided that no such alteration shall be required or made which will permanently injure any such pipes mains plugs or works or prevent the water or gas from flowing as freely and conveniently as usual; and that where under any local Act of Parliament the expenses of or connected with the raising sinking or otherwise altering the situation of any water or gas pipes mains plugs or other waterworks or gasworks, are directed to be borne by the owner of such pipes or works, his liability in that respect shall continue in the same manner and under the same conditions in all respects as if this Act had not been passed." See a corresponding enactment in the Burgh Police (Scotland) Act, 1892 (55 & 56 Vict. c. 55), s. 149, as amended by the Burgh Police (Scotland) Act, 1903, s. 104, and Sched. See *post*, p. 980.

Railways Clauses Act, 1845.

By the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), ss. 18—23, a railway company, for the purposes of its construction, may alter the position of the mains and pipes of a gas company, under the superintendence of the company, after giving forty-eight hours' notice, but they cannot displace the pipes until they have laid down others for continuing the supply to the satisfaction of the engineer of the company, and in accordance with the Act of the company. They must also leave a minimum covering of eighteen inches of soil over pipes of the company when altering the level of any roads.

The railway company must make good any damage and make full compensation for any injury, and if they cross any pipes of the company must make a culvert so that the pipes may be accessible for repairs. If in doing any of these works the supply of gas is interrupted, the railway company are liable to a penalty of £20 for each day of such interruption; but the penalty is not paid to the gas company, but to the overseers of the poor of the parish in which the obstruction occurs.

By the Manchester and Liverpool Express Railway Act, 1902 (2 Edw. 7, c. xxiv.), it is provided that the provisions of ss. 18—23 of the Railways Clauses Consolidation Act, 1845, shall for the purposes of that Act extend and apply to the water and gas mains, pipes, and apparatus of any local authority. See s. 7.

In making a railway the levels shown on the deposited plans cannot be deviated to a greater extent than five feet (or in towns, villages, or land continuously built upon, two feet), without the previous consent of owners, occupiers, and others, including gas companies affected by such deviation. See ss. 11 and 12 of 8 & 9 Vict. c. 20; and *cf.* s. 4 of 26 & 27 Vict. c. 92.

Towns Improvement Act, 1847.

Under the Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), s. 13, the commissioners are to prepare a plan of their district, upon which is to be marked the course of sewers, water and gas pipes, etc., within their district. They may also, by ss. 61 and 62, require the situation of water and gas pipes laid in the streets to be altered, but the expenses, also compensation for any damage done, are to be paid by the commissioners; and the works are not to be permanently injured, or the water or gas prevented from flowing as freely and conveniently as before. This Act extends only to towns or districts in England or Ireland which have by special Act incorporated the same (s. 1); but certain parts of it (not including s. 13) are incorporated with the Public Health Act, 1875.

Telegraph Act, 1863.

Under the powers conferred by the Telegraph Act, 1863 (26 & 27 Vict. c. 112), on companies, they may by s. 6 break up streets, alter the position of

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any pipe not being a main for the supply of gas; but this power is regulated by s. 8, which provides that the work shall be done with as little detriment or inconvenience as possible, that they give twenty-four hours' notice, and that the work be done under the superintendence and to the reasonable satisfaction of the gas company. The costs of superintendence are to be paid by the telegraph company. In return for these privileges the gas company is also empowered to alter the works of the telegraph company *mutatis mutandis* under the like restrictions. See further provisions in the Telegraph Act, 1878 (41 & 42 Vict. c. 76), ss. 7, 8. The powers of this Act are now exercised by the Postmaster-General under the Telegraph Acts, 1863 to 1897.

Tramways Act, 1870.

By s. 30 of the Tramways Act, 1870 (33 & 34 Vict. c. 78), a tramway company may, for the purpose of their undertaking, alter the position of gas or water pipes, subject to the following restrictions:—(1) Seven days' notice to be given to the company whose mains or pipes will be interfered with, and the company may call upon the promoters to make such alterations of the pipes as will insure their safety, any difference as to the necessity for such alteration to be settled by a person nominated by the Board of Trade. (2) Before displacing any mains, pipes, plugs, etc., of the company, the tramway promoters shall, at their own expense, provide other mains, pipes, etc., to the satisfaction of the engineer or surveyor of the company. (3) The tramway promoters shall not lay down any such pipes contrary to the regulations of any Act of Parliament relating to such water or gas company. (4) The promoters to make good any damage. (5) The tramway promoters to be liable to a penalty, not exceeding £20, for every day during which they interrupt the supply of water or gas.

See as to notice to be given under this section, *Hastings Tramways Co.* v. *Hastings and St. Leonards Gas Co.*, [1906] 2 Ch. 578.

By s. 32 of the Act it is further provided as follows:—

> Nothing in this Act shall take away or abridge any power to open or break up any road along or across which any tramway is laid, or any other power vested in any local authority or road authority for any of the purposes for which such authority is respectively constituted, or in any company, body, or person for the purpose of laying down, repairing, altering, or removing any pipe for the supply of gas or water, or any tubes, wires, or apparatus for telegraphic or other purposes, but in the exercise of such power every such local authority, road authority, company body, or person shall be subject to the following restrictions; (that is to say,)
>
> 1. They shall cause as little detriment or inconvenience to the promoters and lessees as circumstances admit:
>
> 2. Before they commence any work whereby the traffic on the tramway will be interrupted they shall (except in cases of urgency, in which cases no notice shall be necessary) give to the promoters and lessees, if there be any, notice of their intention to commence such work, specifying the time at which they will begin to do so, such notice to be given eighteen hours at least before the commencement of the work:
>
> 3. They shall not be liable to pay to the promoters or lessees any compensation for injury done to the tramway by the execution of such work, or for loss of traffic occasioned thereby, or for the reasonable exercise of the powers so vested in them as aforesaid:
>
> 4. Whenever for the purpose of enabling them to execute such work the local authority or the road authority shall so require, the promoters or lessees shall either stop traffic on the tramway to which the notice shall refer, where it would otherwise interfere with such work, or shore up and secure the same at their own risk and cost during the execution of the work there: provided that such work shall always be completed by the local authority or the road authority, as the case may be, with all reasonable expedition:

> 5. Any company, body, or person shall not execute such work so far as it immediately affects the tramway except under the superintendence of the promoters, unless they refuse or neglect to give such superintendence at the time specified in the notice for the commencement of the work or discontinue the same during the progress of the work; and they shall execute such work at their own expense, and to the reasonable satisfaction of the promoters: provided that any additional expense imposed upon them by reason of the existence of the tramway in any road or place where any such mains, pipes, tubes, wires or apparatus shall have been laid before the construction of such tramway shall be borne by the promoters.

It has recently been held that the proviso to sub-s. (5) of this section does not apply in the case of work which is not such as to interrupt the tramway traffic (*In re An Arbitration between the Bristol Gas Co. and the Bristol Tramways and Carriage Co., Ltd.*, [1910] 1 K. B. 114).

The following further points were also decided in the same case, viz.:—That an interruption of the tramway traffic within the meaning of s. 32 (2) of the Act of 1870 was caused (1) when the tramway company, for the purpose of enabling the gas company to repair a fractured main which was causing a serious escape of gas, were deprived of the use of one of their lines, and had to conduct their traffic, both up and down, on one line only; (2) when tramcars were slowed down or brought to a standstill for a sufficient time to enable workmen of the gas company to get out of the trenches under or near the tram lines where they were at work on the pipes of the gas company; that the additional expense of the following works was recoverable from the promoters under s. 32 (5) of the Act of 1870:—(*a*) connecting a new service pipe laid for the first time since the construction of the tramway with a main laid before the construction of the tramway, such connection being an alteration of the main; (*b*) repairing, altering or removing a service pipe or a main laid before the tramway was constructed; but that the additional expense of the following works was not recoverable: (*c*) laying down a new service pipe for the first time since the construction of the tramway; (*d*) repairing, altering or removing a service pipe laid since the tramway was constructed, the main having been laid before the construction of the tramway.

By s. 33 of the Act it is further provided as follows:—

> If any difference arises between the promoters or lessees on the one hand and any local authority or road authority, or any gas or water company, or any company, body, or person to whom any sewer, drain, tube, wires, or apparatus for telegraphic or other purposes may belong, or any other company, on the other hand, with respect to any interference or control exercised, or claimed to be exercised, by them or him, or on their or his behalf, or by the promoters or lessees by virtue of this Act, in relation to any tramway or work, or in relation to any work or proceeding of the local authority, road authority, body, company, or person, or with respect to the propriety of or the mode of execution of any work relating to any tramway, or with respect to the amount of any compensation to be made by or to the promoters or lessees, or on the question whether any work is such as ought reasonably to satisfy the local authority, road authority, body, company, or person concerned, or with respect to any other subject or thing regulated by or comprised in this act, the matter in difference shall (unless otherwise specially provided by this act), be settled by an engineer or other fit person nominated as referee by the board of trade on the application of either party, and the expenses of the reference shall be borne and paid as the referee directs.

As to what is a "difference" within the meaning of this section reference might be made to *R.* v. *Croydon and Norwood Tramways Co.* (1887), 18 Q. B. D. 39; *Bristol Trams and Carriage Co.* v. *Bristol* (*Mayor of*) (1890), 25 Q. B. D. 427; *Norwich Corporation* v. *Norwich Electric Tramways*, [1906] 2 K. B. 119; *R.* v. *Garrett and Hammersmith Borough Council* (1909), 73 J. P. 188.

The provision for arbitration contained in the section ousts the jurisdiction of the High Court with regard to differences coming within the section, and the objection may be taken in the Court of Appeal, though not taken in the High Court (*Norwich Corporation* v. *Norwich Electric Tramways*, *supra*).

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The Ilford District Council were authorised by provisional order, duly confirmed, to lay, and did lay, *inter alia*, a tramway extending two and a half miles along certain streets. Under these streets a gas company had laid, under statutory authority, a gas main. From this main service pipes led off to houses on either side; but for the greater part the houses had not been built or were in course of building. An intending consumer having applied for a service, the gas company encountered an obstruction by reason of the bed of concrete on which the tramway was laid. The gas company therefore, under s. 32, gave notice to the tramway company requiring them to alter the position of the whole of the gas mains along the route referred to, to such an extent and in such a manner that the tramway should not endanger such mains or interfere with the supply of gas. The Board of Trade appointed an arbitrator who awarded as follows:—"I award and adjudge that the gas mains laid down before the commencement of Tramway No. 12 in Ley Street and the termination of the same tramway in Cranbrook Road shall be lowered to a sufficient extent to admit of service pipes between this main and the houses on the side of the tramway remote from the main, being laid so as to enable these service pipes to be laid horizontally under the bottom of the trench in which the electric conduits are placed without having to cut through any concrete which may be used under the bottom of such trench. In those cases where the position of the gas main is underneath the tramway, or so close to it that access to the gas main could not be conveniently effected without interfering with the tramway, the gas main shall be moved laterally to such a distance as to enable such access to be obtained without interference with the concrete trench under the tramway." On a motion to set aside or refer back this award to the arbitrator, it was held that the arbitrator had not in any way exceeded his jurisdiction (*Ilford Urban District Council* v. *Ilford Gas Co.* (1903), 67 J. P. 239).

For a report of an arbitration between the East London Waterworks Company and the West Ham Gas Company, on the one hand, and the West Ham Corporation on the other, with respect to a dispute regarding the necessity for altering gas and water mains and services in consequence of the laying down of a tramway authorised by the corporation's Act of 1900, see Jl. of G. L., August 9th, 1904, p. 410; August 16th, 1904, p. 480.

Notwithstanding the provisions of ss. 30 and 32 of the Tramways Act, 1870, the point has repeatedly been raised by gas and water companies whether the provisions of those sections afford adequate protection for their mains and pipes, and the contention on their behalf has been that the companies ought to be allowed, after the service of the notice, to elect to do the work themselves and to recover the cost from the tramway undertakers. The Court of Referees have taken the view that ss. 30—32 afford sufficient protection: Lea Bridge, Leyton and Walthamstow Tramways Bill on the petition of the East London Waterworks Company, 3 C. & R. 72; Scarborough Tramways Bill, on the opposition of the Scarborough Gas Company, 2 Saund. & Aust., 145; Camberwell and Dulwich Tramways Bill, 1904, on the opposition of the South Metropolitan Gas Company, Jl. of G. L., March 29th, 1904, p. 850. There are, nevertheless, many precedents in which the clause has been inserted: Wrexham District Tramways Order, 1899 (confirmed by 62 & 63 Vict. c. cclxxiv.), s. 12; Croydon Corporation Act, 1900, s. 53; Bexley Tramways Act, 1901, s. 33; Bournemouth Corporation Act, 1901, s. 6; London County Council (Tramways and Improvements) Act, 1901, ss. 48 and 49; London United Tramways Act, 1902, s. 17; London County Council (Subways and Tramways) Act, 1902, s. 21; South Shields Corporation Act, 1903, s. 31; Preston, Chorley and Horwick Tramways Act, 1903, s. 39 (3); Folkestone, Sandgate and Hythe Tramways Act, 1906, s. 81; Manchester Corporation Tramways Act, 1907, s. 16; Oxford and District Tramways Act, 1907, s. 66.

Metropolitan Acts.

In various Metropolitan Acts special powers have been inserted authorising alteration of gas and water pipes. See *e.g.*, the Metropolitan Board of Works (Various Powers) Acts, 1887 and 1888, ss. 18 and 21 respectively, and the London County Council (General Powers) Acts, 1892, 1898, and 1899, ss. 17, 19, and 21 respectively. Now, by the London Government Act, 1899 (62 & 63 Vict. c. 14), as regards the area within the administrative county of London, the duties of the vestries as road authority devolve upon the metropolitan borough councils. By that Act it is provided:

"6.—(1.) As from the appointed day the power and duty of maintaining any main road existing at the passing of this Act within a borough shall be transferred to the borough council, and the road shall vest in the borough council and shall cease to be a main road.

"(2.) Where a highway in a borough is repairable by the London County Council by reason of its being the roadway or footway of a bridge, embankment, or otherwise, the borough council shall, if so required by the county council, undertake the maintenance and repair thereof in consideration of such annual payment by the county council as may from time to time be agreed on, or in default of agreement be finally determined by the Local Government Board; and for the purpose of the undertaking the borough council shall have the same powers and be subject to the same duties and liabilities as if the highway were vested in them."

The Metropolis Management Act, 1855, s. 98, enacts that "It shall be lawful for every vestry and district board from time to time to cause all or any of the streets within their parish or district, or any part thereof respectively, to be paved or repaired, when and as often and in such form and manner and with such materials as such vestry or board think fit, and to cause the ground or soil thereof to be raised or lowered, and the course of the channels running in, into, or through the same to be turned or altered, in such manner as they think proper, and to alter the position of any mains or pipes in or under such street, such alteration to be made subject to the approval of the engineer of the company to which such mains or pipes belong." See the note to s. 47, *post*, p. 218.

As to Kensington see L. C. C. (General Powers) Act, 1903 (3 Edw. 7, c. clxxxvii.), ss. 41, 42.

A water company in exercise of statutory powers laid down pipes under the surface of a street, and the highway authority of the district afterwards, in exercise of the powers given by s. 98 of the Metropolis Management Act, 1855, proposed to lower the surface of the street, and to do so without altering or disturbing the position of the pipes, but so as to leave only a few inches of soil over them. In an action by the water company to restrain the highway authority from lowering the surface of the street without at the same time lowering the pipes of the company to a corresponding depth under the new surface:—*Held*, that s. 98 of the Act of 1855 did not impose upon the highway authority when exercising the power thereby given to them of altering the level of a street, any express or implied duty to exercise also at their own expense the power by the same section given of altering the position of the pipes thereunder, for the benefit of the water company, in a case where the highway authority did not require for their own purposes to interfere with such pipes (*Southwark and Vauxhall Waterworks Co.* v. *Wandsworth Board of Works*, [1898] 2 Ch. 603). As to the breaking up of streets by companies for the purpose of laying gas or water pipes in the metropolis, see further the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), ss. 109—115.

Electric Lighting Act.

Under the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 12, the provisions of the Gasworks Clauses Act, 1847, with respect to the breaking up of streets and various other powers of that Act and of the Gasworks Clauses Act, 1871, are incorporated. By s. 15 the undertakers are authorised under certain conditions to alter the position of any pipes or wires under streets authorised to be broken up. Before the passing of the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), the Board of Trade inserted in each Provisional Order detailed provisions upon this subject. Sections 17 and 18 of the schedule to this Act of 1899 now contain these provisions. The first-mentioned of these sections provides that electric lighting undertakers may, subject to the provisions therein set out, alter the position of pipes which may interfere with the exercise of their powers; and the section also makes provision for the alteration by any body or person of the position of electric lines or works which may interfere with the exercise of any powers vested in that body or person. Section 18 provides that where electric lighting undertakers require to dig trenches for electric lines (other than service lines) or other works near to which any . . . watercourse . . . or work of a local authority, or any main, pipe . . . or other work of a gas . . . or water company has

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been placed, or where any gas or water company require to dig a trench for laying down or constructing new mains or pipes (other than service pipes) near to which lines or works of electric lighting undertakers have been placed, the undertakers or gas or water company (as the case may be) shall, unless it is otherwise agreed, or in cases of sudden emergency, give not less than three days' notice to the local authority or the gas company, water company or electric lighting company (as the case may be) before commencing to dig the trench; and the section makes provision as to superintendence of the work and compliance with reasonable requirements for protecting from injury such watercourses . . . mains, pipes . . . electric lines, etc., and for securing access thereto, and imposes an obligation to repair any damage which may be done. The section makes further provision as to the undermining of pipes, etc., the insulation of electric lines, the determination of differences and the payment of compensation on non-compliance with the provisions of the section.

Light Railways Act, 1896.

In Orders under the Light Railways Act, 1896 (59 & 60 Vict. c. 48), special provisions may be inserted for the protection of the pipes of gas and water companies, and power may be given to alter the position of the same under prescribed conditions and restrictions. (See *e.g.*, the Barking and Beckton Light Railways Order, 1899, printed as a Parliamentary paper, No. C 9211 of 1899.) A special clause is apparently now inserted in every Order. See *e.g.* clause 36 of Dartford Light Railways Order, 1901. See also the Burgh Police (Scotland) Act, 1892, s. 149, *post*, p. 980.

"Doing as little damage as may be."

As to the meaning of the words "doing as little damage as may be," see *R.* v. *East and West India Docks* (1853) 2 E. & B. 466, and *Fenwick* v. *East London Rail. Co.* (1875), L. R. 20 Eq. 544. The corporation of a town were authorised to carry on gasworks to light the town. The profits were to go partly in improving the town and partly in reducing the water rates :—*Held*, that the corporation were bound to make compensation for an injury arising from the negligence of their servants in laying down gas pipes (*Scott* v. *Mayor of Manchester* (1857), 26 L. J. Ex. 132, 406). The servant of the defendant company, whilst breaking up a concrete pavement for the purposes of the company's undertaking and within the limits of their special Act, accidentally caused a piece of concrete to fly up and break a window in a neighbouring house :—*Held*, that the company was liable for the damage so done (*Hornby* v. *Liverpool United Gas Co.* (1883), 47 J. P. 231).

If by a reasonable exercise of powers given by statute damage can be prevented, it is "negligence" on the part of the undertakers not to make such reasonable exercise of their powers (*Geddis* v. *Bann Reservoir Proprietors* (1878), 3 App. Cas. 430; *Baroda* (*Gaekwar of*) v. *Gandhi Kachrabhair Kasturchand* (1903), L. R. 30 Indian App. 60, and other cases cited, *post*, p. 390; *cf. East Fremantle Corporation* v. *Annois*, [1902] A. C. 213; and *Ash* v. *Great Northern, Piccadilly, and Brompton Rail. Co.* (1903), 67 J. P. 417.

Not to enter on private land without consent.

7. Provided always, that nothing herein shall authorise or empower the undertakers to lay down or place any pipe or other works into, through, or against any building, or in any land, not dedicated to public use, without the consent of the owners and occupiers thereof; except that the undertakers may at any time enter upon and lay or place any new pipe in the place of an existing pipe in any land wherein any pipe hath been already lawfully laid down or placed in pursuance of this or the special Act or any other Act of Parliament, and may repair or alter any pipe so laid down.

Questions as to what is private land.

A road passed alongside the plaintiff's premises and over certain arches occupied by him as cellars. The defendants, a company constituted under a local Act incorporating the general Act of 1847, in opening and breaking up the soil of the road for the purpose of laying down gas pipes damaged the arches :—*Held*, that the arches were buildings within the above section, and that the defendants could not justify breaking through them (*Thompson* v. *Sunderland Gas Co.* (1877), 2 Ex. D. 429).

As to railway bridges, see the cases cited in the note under s. 6, *ante*, p. 163; and see *Taff Vale Rail. Co.* v. *Pontypridd Urban District Council*, *post*, p. 182.

A gas company laid down main pipes between two villages on the seashore in an open tract of land above mean high-water mark, which belonged to the owner of the enclosed land fronting the shore. The inhabitants of the villages had always gone to and fro between them along the shore, and at high-water passed over this piece of land as they chose, and in accordance with the tide, but by no defined track. The owners brought an action for a mandatory injunction to compel the company to remove the pipes:—*Held*, that the tract of land in question was not a "street" within the definition in s. 3 of the Gasworks Clauses Act, 1847 (*Maddock* v. *Wallasey L. B.* (1886), 55 L. J. Q. B. 267). See also *Curtis* v. *Embery* (1872), L. R. 7 Ex. 369, and *Bellamy* v. *Liverpool United Gaslight Co.*, cited in the notes to s. 36 of Act of 1871, *post*, p. 241.

An urban authority, and also a rural authority on being invested with urban powers, may require streets not repairable by the inhabitants at large to be provided (*inter alia*) with proper means for lighting, under s. 150 of the Public Health Act, 1875, and may afterwards declare them public (s. 152). See further as to such streets the Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59), s. 41, and the Private Streets Works Act, 1892 (55 & 56 Vict. c. 57), s. 25. These Acts are adoptive.

Where water pipes had, without any parliamentary authority and without the consent of the owner of the soil, been laid in the soil of a highway, an injunction to restrain the continuance of the pipes was granted; the owner of the soil not being left to his remedy at law, and not being required to establish his right at law; and the facts that the soil under the highway was of no value to the owner, and that his motive for applying to the court was not connected with the enjoyment of his land, and was to cripple the operations of a rival water company, were held not to be reasons against the granting of the injunction (*Goodson* v. *Richardson* (1874), L. R. 9 Ch. 221). In this case the court refused to leave the plaintiff to his remedy at law (*Deere* v. *Guest* (1836), 1 My. & C. 516), because (as put by MELLISH, L.J.) "it is extremely doubtful whether he could remove the pipes without rendering himself subject to being indicted by the highway board; and in my opinion he is entitled to be relieved from that difficulty."

The owners of a house had had for many years a supply of water by pipes passing through the adjoining land under circumstances which in the view of the court created an easement. The owner of part of the adjoining land proceeded to build a house over part of the line of pipes:—*Held*, that the owners of the house had a right to go on the adjoining land and repair the pipes when necessary, and that by the building of the house their means of access to the pipes would be materially interfered with and rendered more expensive; and an injunction was granted to restrain the building of the house (*Goodhart* v. *Hyett* (1883), 25 Ch. D. 182).

For a case in which an old ten foot road had been widened to thirty feet by the owners of adjoining land on either side, and in which questions arose as to dedication, liability to repair, and responsibility for accident, see *Owen* v. *De Winton* (1894), 10 T. L. R. 534.

Occupation roads laid out through an estate for the use and convenience of the inhabitants are not thereby dedicated to the public. An estate was purchased for the purpose of building houses; a part was laid out as private roads, and upon a partition, the owners taking the roads covenanted that the other freeholders and the occupiers of the houses should have the full use and enjoyment of the roads in as absolute a manner as if they were public roads:—*Held*, by Sir J. ROMILLY, M.R., that a request to be supplied with gas by a minority of the occupiers of houses was sufficient, without the consent of the freeholder, to justify the breaking up of the roads by a gas company (who had obtained a special Act incorporating the general Act of 1847) to lay down their pipes to comply with such request. On appeal to the Lords Justices, the decision was affirmed, as every occupier had the same right for the purpose of his use and enjoyment to call in all such aid as he might have done if the roads had been public roads (*Selby* v. *The Crystal Palace District Gas Co.* (1862), 31 L. J. Ch. 595).

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A gas main had been laid for many years over a certain bridge, and a railway company brought an action claiming a declaration that the defendants were not entitled to maintain their gas main across the bridge on the ground that the bridge was their private property and had not been dedicated to the public use and that they had not consented to the laying of the pipes. The real object of the railway company was to obtain an acknowledgment of their right as owners, and payment to them of a nominal yearly sum for the easement or wayleave. BUCKLEY, J., found that the railway company had not dedicated and could not dedicate the bridge to the use of the public; but in the circumstances he made no order upon the defendants as to the removal of the pipe (*Taff Vale Rail. Co.* v. *Pontypridd U. D. C.* (1905), 69 J. P. 351).

A local board having claimed under the powers of the Lighting and Watching Act, 1833 (3 & 4 Will. 4, c. 90), and the Public Health Act, 1848, s. 46, to fix a gas lamp to a private tenement without leave, the court held there was no such right (*Meek* v. *Langdon* (1862), 37 L. T. Journ. 181).

Footpaths.

A footpath may or may not be a highway. See as to footpaths across arable fields, and when they may lawfully be ploughed up, *Mercer* v. *Woodgate*, (1869), L. R. 5 Q. B. 26; *Arnold* v. *Blaker* (1871), L. R. 6 Ex. 433; *Arnold* v. *Holbrook* (1873), L. R. 8 Q. B. 96; *Brackenborough* v. *Thorsby* (1869), 19 L. T. 692.

Notice to be served on persons having control, etc., before breaking up streets or opening drains.

8. Before the undertakers proceed to open or break up any street, bridge, sewer, drain, or tunnel, they shall give to the persons under whose control or management the same may be, or to their clerk, surveyor, or other officer, notice in writing of their intention to open or break up the same, not less than three clear days before beginning such work, except in cases of emergency arising from defects in any of the pipes or other works, and then so soon as is possible after the beginning of the work, or the necessity for the same shall have arisen.

An Act empowering a company to contract for purposes of public advantage ought not to receive a narrow construction. Therefore in construing a gas company's Act, which, after requiring the consent of certain local commissioners to the breaking up of the pavements, provided that where any consent was required and should be obtained by the company to break up any pavement to lay down pipes, or for any other purpose which might be required under the Act, nothing in the Act contained should (after such consent obtained and after twenty-four hours' notice) prevent the company from breaking up the pavement for the purpose of laying down pipes or for any other purpose which might be required under the Act:—*Held*, by the Lords Justices, that a construction *reddendo singula singulis* was not the correct one, and that the power to break up the pavement was not to be confined to the particular purpose to which the consent had been expressly given (*Dover Gaslight Co.* v. *Mayor, etc. of Dover* (1855), 7 De G. M. & G. 545).

Where tramways are laid along a public street or road the tramway company are, under the Act of 1870, bound to keep in repair so much of the street or road as lies between a distance of eighteen inches on either side of the outer line of the tramways. In such a case it was held that the National Telephone Company, acting under licence from the Postmaster-General, are not bound to obtain the previous consent of the tramway company before proceeding to break up the street to lay their wires, the tramway company not being a "landowner or other person liable for the repair" of the street within the meaning of s. 13 of the Telegraph Act, 1863 (26 & 27 Vict. c. 112) (*Bristol Tramways and Carriage Co.* v. *National Telephone Co.*, [1899] 2 Ch. 282).

The Chippenham Gas Bill in the Session of 1904 was opposed by the Wilts County Council on various points, including the length of notice required under the above section. The company conceded an extension from three to seven days.

Streets or drains not to be broken up except under superintendence of persons having control of the same.

9. No such street, bridge, sewer, drain, or tunnel shall, except in the cases of emergency aforesaid, be opened or broken up except under the superintendence of the persons having the control or management thereof, or of their officer, and according to such plan as shall be approved of by such persons or their officer, or in case of any difference respecting such plan, then according to such plan as shall be determined by two justices; and such justices may, on the application of the persons having the control or management of any such sewer or drain, or their officer, require the undertakers to make such temporary or other works as they may think necessary for guarding against any interruption of the drainage during the execution of any works which interfere with any such sewer or drain: Provided always, that if the persons having such control or management as aforesaid, and their officer, fail to attend at the time fixed for the opening of any such street, bridge, sewer, drain, or tunnel, after having had such notice of the undertakers' intention as aforesaid, or shall not propose any plan for breaking up or opening the same, or shall refuse or neglect to superintend the operation, the undertakers may perform the work specified in such notice without the superintendence of such persons or their officer.

If persons having the control, etc., fail to superintend, undertakers may perform the work without them.

See the notes to s. 31 of the Waterworks Clauses Act, 1847, *post.*

Streets, etc., broken up to be reinstated without delay.

10. When the undertakers open or break up the road or pavement or any street or bridge, or any sewer, drain, or tunnel, they shall with all convenient speed complete the work for which the same shall be broken up, and fill in the ground, and reinstate and make good the road or pavement, or the sewer, drain, or tunnel, so opened or broken up, and carry away the rubbish occasioned thereby, and shall at all times, whilst any such road or pavement shall be so opened or broken up, cause the same to be fenced and guarded, and shall cause a light sufficient for the warning of passengers to be set up and maintained against or near such road or pavement, where the same shall be open or broken up, every night during which the same shall be continued open or broken up, and shall keep the road or pavement which has been so broken up in good repair for three months after replacing and making good the same, and for such further time, if any, not being more than twelve months in the whole, as the soil so broken up shall continue to subside.

See also Towns Improvement Clauses Act, 1847, ss. 79—83, incorporated with the Public Health Act, 1875, by s. 160. Section 80 is repealed by the Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59), s. 34 (3), where Part III. of that Act has been adopted.

An action was brought against an incorporated gas company for that by negligence a piece of metal was projected against plaintiff. To this it was pleaded that the grievance was done in execution of the powers of the company, and that there was no negligence of the company otherwise than by their workmen. It was held that this was no answer to the action (*Scott* v. *Manchester* (*Mayor, etc.*) (1857), 2 H. & N. 204 (Ex. Ch.)). See *Hornby* v. *Liverpool United Gas Co.* (1883), 47 J. P. 231, *ante*, p. 180.

In an action against a gas company for injury caused to plaintiff, who was thrown out of a vehicle owing to the imperfect reinstatement of a road after

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laying a pipe, the defendant company contended that they were only liable to penalty under the next section. Lord RUSSELL OF KILLOWEN, L.C.J., held that the action would lie because there had been more than mere breach of duty, the jury having found nuisance, and because of s. 29, p. 198, and s. 9 of the Act of 1871 (*Goodson* v. *Sunbury Consumers Gas Co.* (1896), 75 L. T. 251).

See further the notes to s. 36 of the Act of 1871, *post*, p. 241.

As to the breaking up of streets by companies for the purpose of laying gas, water or other pipes in the metropolis, see Michael Angelo Taylor's Act (57 Geo. 3. c. ccxxix.), s. 23, and Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), ss. 109—115. Under the powers of s. 114 the vestry or district board (now the borough council) may themselves do the work of reinstating and recover the expenses from the company or person by whom the street is opened. Where under this section a borough council elected to do the work and the plaintiff suffered injury through the negligent way in which the work was done it was held that the company were not liable (*Cressy* v. *South Metropolitan Gas Co.* (1906), 70 J. P. 405). As to whether the expenses recoverable by a local authority include the expense of superintendence, see *New River Co.* v. *Westminster Corporation* (1904), 73 L. J. K. B. 109 and *S. C.* in C. A. *sub nom. Metropolitan Water Board* v. *Westminster Corporation* (1905), 70 J. P. 52. Where a borough council reinstated under the above-mentioned Acts and used concrete where no concrete was used before and in other places more concrete than had been used before, it was held that they were entitled to recover from the gas company the expense of such concrete where the same was necessary (according to the finding of the magistrate) to make the street as good as it was before (*Commercial Gas Co.* v. *Poplar Borough Council* (1906), 94 L. T. 222).

See also as to the above-mentioned sections, *Metropolitan Water Board* v. *Bradley* (1910), 74 J. P. 331.

Under the Turnpike Roads (Scotland) Act, 1831 (1 & 2 Will. 4, c. 43), s. 100, incorporated with the Roads and Bridges (Scotland) Act, 1878 (41 & 42 Vict. c. 51), s. 123, road authorities are given certain special powers in regard to the repairing of roads opened for the purpose of laying pipes. See *Lanarkshire Upper Ward District Committee* v. *Airdrie, Coatbridge and District Water Trustees* (1906), 43 S. L. R. 526.

Penalty for delay in reinstating streets, etc.

11. If the undertakers open or break up any street or bridge, or any sewer, drain, or tunnel, without giving such notice as aforesaid, or in a manner different from that which shall have been approved of or determined as aforesaid, or without making such temporary or other works as aforesaid when so required, except in the cases in which the undertakers are hereby authorised to perform such works without any superintendence or notice, or if the undertakers make any delay in completing any such work, or in filling in the ground, or reinstating and making good the road or pavement, or the sewer, drain, or tunnel, so opened or broken up, or in carrying away the rubbish occasioned thereby, or if they neglect to cause the place where such road or pavement has been broken up to be fenced, guarded, and lighted, or neglect to keep the road or pavement in repair for the space of three months next after the same is made good, or such further time as aforesaid, they shall forfeit to the persons having the control or management of the street, bridge, sewer, drain, or tunnel, in respect of which such default is made, a sum not exceeding five pounds for every such offence, and they shall forfeit an additional sum of five pounds for each day during which any such delay as aforesaid shall continue after they shall have received notice thereof.

As to what is a sufficient "plan," see the notes to s. 31 of the Waterworks Clauses Act, 1847, *post*. See also *Goodson* v. *Sunbury Consumers Gas Co.*, cited under the last section, and the notes under s. 36 of the Act of 1871, *post*, p. 241.

In case of delay other parties may reinstate, and recover the expenses.

12. If any such delay or omission as aforesaid take place, the persons having the control or management of the street, bridge, sewer, drain, or tunnel, in respect of which such delay or omission shall take place, may cause the work so delayed or omitted to be executed, and the expense of executing the same shall be repaid to such persons by the undertakers; and such expenses may be recovered in the same manner as damages are recoverable under this or the special Act.

Supply of Gas.

And with respect to the supply of gas, and the recovery of the rent to be paid for the same, be it enacted as follows:

Power of the company to contract for lighting streets, etc.

13. The undertakers may from time to time enter into any contract with any person for lighting or supplying with gas any public or private building, or for providing any person with pipes, burners, meters, and lamps, and for the repair thereof; and may also from time to time enter into any contract with the commissioners, trustees, or other persons having the control of the streets within the limits of the special Act for lighting the same or any of them with gas, and for providing such commissioners, trustees, or persons with lamps, lamp posts, burners, and pipes for such purpose, and for the repairs thereof, in such manner and upon such terms as shall be agreed upon between the undertakers and the said commissioners, trustees, or other persons.

In clause 1 of the Model Gas Bill there is now added to the words incorporating the Gasworks Clauses Acts, 1847 and 1871, the following proviso:—"Provided that s. 13 of the former Act shall be read as if the words 'or any premises' were inserted after the words 'private building.'"

Prior to the passing of the Gasworks Clauses Act, 1871, there was no obligation upon a gas company to supply a customer with gas or to continue to do so for any particular period, nor did the circumstance of quarterly payments, or the hiring of a meter by the customer, or of the company being the only one in the neighbourhood, afford any ground for implying a contract to that effect (*Hoddesdon Gas and Coke Co.* v. *Haselwood* (1859), 6 C. B. (N.S.) 239). By s. 11 of that Act, the undertakers are required to furnish a sufficient supply of gas to owners and occupiers within the limits of the special Act upon certain conditions.

Effect of an equality clause.

In the absence of an equality clause, a gas company is not bound to charge a like price to all consumers of gas. A company, empowered by statute to take tolls in return for a public service is not bound, independently of express enactment, to exact the same tolls from all persons alike, but is at liberty to remit the tolls, or any portion of them, to particular persons, or to a particular class of persons, at its pleasure and discretion (*Hungerford Market Co.* v. *City Steamboat Co.* (1860), 3 E. & E. 365). Cockburn, C.J., observed, in giving judgment: "The result then is that, in our opinion, there neither arises upon these Acts of Parliament, or exists at common law, any obligation on this company to exact uniform tolls, provided they keep within the amount fixed and appointed conformably to statute 11 Geo. 4, c. lxx." "At common law a person holding himself out as a common carrier of goods was not under any obligation to treat all customers equally": *per* Blackburn, J., in *G. W. Rail. Co.* v. *Sutton* (1868), L. R. 4 H. L., at p. 237. The following are

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instances of equality clauses: Railway Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), s. 90; Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31), s. 2; the Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), s. 25; and the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 20. Sometimes where differential rates are sanctioned in different areas within the limits of supply, provision is specially made as to the proportion which should be maintained between these differential rates. For an instance of an equality clause in a gas Act, see New Swindon Gas Act, 1893, s. 62. As to charging a differential rate within the same borough without express statutory authority, see *Northampton Corporation* v. *Ellen*, [1904] 1 K. B. 299, and *Bridport Waterworks Co.* v. *Hounsell*, cited *post*, p. 513.

Present provisions as to equality of charges.

In 1904 there was included in the Model Gas Bill the following clause as to "discounts":—"The company may, if they think fit, allow discounts or rebates to consumers of gas in consideration of prompt payment of gas charges not exceeding in any case ten per centum, and in addition thereto or irrespective thereof they may if they think fit allow discounts or rebates to large consumers not exceeding in any case fifteen per centum: Provided that all discounts or rebates shall be of equal amount under like circumstances to all consumers: Provided also, that notice of the effect of this enactment shall be endorsed on every demand note for gas charges."

In the Model Bill of 1906 an alternative provision was made as follows:—"There is in clause 1 now added to the words incorporating the Gasworks Clauses Acts, 1847 and 1871, a proviso that s. 13 of the former Act shall be read as if the words 'Provided also that every such contract entered into by the company shall be alike in terms and amount under like circumstances to all consumers' were added at the end of that section." At the same time the following footnote was appended to the "Discounts" clause above set out:—"This clause is not required where s. 13 of the Gasworks Clauses Act, 1847, is amended, as appears in clause 1," *i.e.*, as above mentioned. See further hereon the Introduction at p. 48.

Public lighting.

A gas company who are under a statutory obligation to supply a fixed quantity of gas to the public lamps in a district at a fixed price during a certain period are not liable to a reduction in that price, if by reason of an occurrence over which they have no control (such as a frost of exceptional severity) the fixed amount of gas has not been supplied during a part of that period (*Richmond Gas Co. and Richmond* (*Mayor*), *In re* [1893] 1 Q. B. 56). *Quære*, whether the court in this case gave sufficient consideration to the principle of law that in local and personal Acts a statutory provision, such as existed in the above case, must be regarded as a contract between the parties, whether made by their mutual agreement, or forced on them by the legislature. See *per* Lord WATSON in *Countess of Rothes* v. *Kirkcaldy and Dysart Waterworks Commissioners* (1882), 7 App. Cas. 694; and see *per* Lord SELBORNE, in *Milnes* v. *Mayor, etc. of Huddersfield* (1886), 11 App. Cas., at p. 523.

As to public lighting, see further the notes to s. 24 of the Act of 1871, *post*, p. 235.

The courts will not interfere by injunction at the instance of a gas company to prevent another gas company from supplying gas beyond the limits of their special Act, as there is not such a private injury as the court could take notice of. Any question of injury to the public by the exercise of powers in excess of those granted by Parliament must be determined upon an information by the Attorney-General (*The Pudsey Coal Gas Co.* v. *The Mayor, etc. of Bradford* (1873), L. R. 15 Eq. 167; and other cases cited *ante*, pp. 152 *et seq.*).

An urban authority is empowered by the Public Health Act, 1875, s. 161, to contract with any person for the supply of gas, or other means of lighting the streets, markets, and public buildings in their district, and may provide such lamps, lamp posts, and other materials and apparatus as they may think

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necessary for lighting the same. See further, *post*, as to the powers of local authorities in relation to gas supply.

By the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 136, trustees acting under any local Act of Parliament for lighting or supplying with gas or water, etc., within a borough, may transfer their powers to the municipal corporation of the borough. For like powers which existed under the now repealed Acts of 1835 and 1857, relating to municipal corporations, see 5 & 6 Will. 4, c. 76, s. 75, and 20 & 21 Vict. c. 50, s. 2.

Public Health Act, 1875.

Lighting and Watching Act, 1833.

Public lighting may also be provided, in any parish where there is no urban authority, under the provisions of the 3 & 4 Will. 4, c. 90 (Lighting and Watching Act, 1833), which repealed the old Lighting and Watching Act of 11 Geo. 4, c. 27. In urban districts it is in its turn superseded by the Public Health Act, 1875. See s. 163 of the latter Act, which provides that "Where in any place which after the passing of this Act becomes constituted or included in an urban district, or which by virtue of any order of the Local Government Board, becomes subject to this enactment, the Act passed in the fourth year of the reign of King William the Fourth, intituled 'An Act to repeal an Act of the eleventh year of his late Majesty King George the Fourth, for the lighting and watching of parishes in England and Wales, and to make other provisions in lieu thereof,' has been adopted, the said Act shall be superseded by this Act, and all lamps, lamp posts, gas pipes, fire engines, hose, and other property vested in the inspectors for the time being under the said Act, shall vest in the authority having under this Act jurisdiction in such place." The Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 7, enacts that as from the appointed day in every rural parish the parish meeting shall exclusively have the power of adopting the Lighting and Watching Act, 1833. See more fully *post*, p. 819, where the subject of the rights and duties of local authorities on the subject of lighting are dealt with.

Contracts may also be entered into by town councils and commissioners for lighting baths and washhouses (9 & 10 Vict. c. 74, ss. 26, 28). Urban authorities under the Public Health Act, 1875, now exercise authority under this and certain amending Acts. See s. 10 of the Public Health Act, 1875. Under the Local Government Act, 1894, s. 7, parish meetings, in rural parishes, have exclusively the power of adopting the Baths and Washhouses Acts, 1846 to 1899, and in parishes which have a parish council, that council is, generally speaking, the authority for the execution of the Acts.

Under the powers of the Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), ss. 119, 120, commissioners may contract for lighting the streets with gas for any period prescribed in the special Act, or if there be no prescribed period, then for any period not exceeding three years. They may also provide lamps, posts, and other works necessary for lighting the streets, and in case of any dispute as to price, this is to be settled by arbitration in accordance with the provisions of the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18).

Under the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), s. 69, repealing and substantially re-enacting the Labouring Classes Lodging-Houses Act, 1851, power is given to commissioners, trustees or companies to supply gas and water to lodging-houses under the Act, either without charge or on such favourable terms as they shall think fit.

Metropolis.

The quality and price to be charged for gas supplied to the metropolis were regulated by the Metropolis Gas Act, 1860 (23 & 24 Vict. c. 125); but this Act has been much varied by special Acts, which will be noted in their place, *post*. See *Great Central Gas Consumers Co.* v. *Clarke* (1862), 13 C. B. (N.S.) 838.

As to the effect of the Metropolis Gas Act, 1860, on gas companies not enumerated in it, see *Imperial Gaslight and Coke Co.* v. *West London Junction Gaslight Co.* (1867), 14 W. R. 1019, cited *post*, in the notes to that Act.

Scotland.

As to gas supply in Scotland, see *post*.

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Power to undertakers to let meters.

[*Repealed.*]

Meters not liable to distraint for rent.

14. [*The undertakers may let for hire any meter for ascertaining the quantity of gas consumed or supplied, and any fittings for the gas, for such remuneration in money as shall be agreed upon between the undertakers and any person to whom the same may be so let, and such remuneration shall be recoverable in the same manner as the rents or sums due to the undertakers for gas; and such meters and fittings shall not be subject to distress, or to the landlord's hypothec for rent of the premises where the same may be used, nor to be taken in execution under any process of a court of law or equity, or any fiat or sequestration in bankruptcy, against the person in whose possession the same may be.*]

The above section is repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66), except so far as incorporated with special Acts to which the Gasworks Clauses Act, 1871, does not apply. See now ss. 18 and 19 of the Gasworks Clauses Act, 1871, *post*, pp. 230 *et seq.*

A gas stove let for hire is a "fitting for the gas" within the meaning of this section, and is therefore not subject to distress for rent (*Gaslight and Coke Co.* v. *Hardy* (1886), 17 Q. B. D. 619). See a comment on this case, *post*, p. 220. It will be observed that the wording of s. 18 of the Act of 1871 differs from that of the section in the text. The stove in the above case was used for heating purposes only (56 L. J. Q. B. 168). In a later case the stove was used for cooking "containing besides the burners and the chamber in which the gas was consumed, other chambers together with the grates, hot plates, and such arrangements for the reception of cooking utensils." STEPHEN, J., at the trial, held that the stove was a "fitting for the gas" within s. 14 of the Act of 1847, and that the case came within the decision in *Hardy's Case*, *supra* (*Gaslight and Coke Co.* v. *Herbert Smith* (1886), 3 T. L. R. 15).

Undertakers may enter buildings for ascertaining quantities of gas consumed.

15. [*The clerk, engineer, or other officer duly appointed for the purpose by the undertakers may at all reasonable times enter any building or place lighted with gas supplied by the undertakers, in order to inspect the meters, fittings, and works for regulating the supply of gas, and for the purpose of ascertaining the quantity of gas consumed or supplied; and if any person hinder such officer as aforesaid from entering and making such inspection as aforesaid at any reasonable time, he shall for every such offence forfeit to the undertakers a sum not exceeding five pounds.*]

This section is repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66), except so far as incorporated with special Acts to which the Gasworks Clauses Act, 1871, does not apply. See s. 21 of the Gasworks Clauses Act, 1871, *post*, p. 234.

Recovery of rents due for gas.

16. If any person supplied with gas by virtue of this or the special Act neglect to pay the rent due for the same to the undertakers, the undertakers may stop the gas from entering the premises of such person, by cutting off the service pipe, or by such means as the undertakers shall think fit [*and recover the rent due from such person, if less than twenty pounds, together with the expense of cutting off the gas, and the costs of recovering the rent, in the same manner as any damages for the recovery of which no special provision is made are recoverable under this or the special Act; or, if the rent so due amount to twenty pounds or upwards, the undertakers may recover the same, together with the expenses of cutting off the gas, by action in any court of competent jurisdiction*].

The words italicised are repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66), except so far as incorporated with special Acts to which

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the Gasworks Clauses Act, 1871, does not apply. The substituted provisions are ss. 23, 40 and 41 of the Act of 1871, *post*, pp. 235, 246, 247. See those sections and the notes thereunder. As to the duty of a gas company to supply gas to owners and occupiers, and their right to refuse a supply when arrears are owing, see the note under s. 11 of the Act of 1871.

A municipal corporation supplying gas were held liable for damages caused by an explosion of gas which arose from an unskilful and negligent cutting off of the supply of gas by one of their servants (*Paterson* v. *Mayor, etc. of Blackburn* (1892), 9 T. L. R. 55). See also *Dominion National Gas Co., Ltd.* v. *Collins*, [1909] A. C. 640.

A large mansion divided into separate flats was supplied with gas by the gas company through one large meter. Each flat was supplied through a smaller subsidiary meter, placed and maintained by the landlord. For a case in which, under such circumstances, an injunction was granted to prevent the landlord from cutting off the supply, see *Hersey* v. *White* (1893), 9 T. L. R. 335.

In an action to recover the price of 7,129,300 cubic feet of gas sold and delivered during a period of five years, at 2*s.* 5*d.* per cubic foot, the defendant, as to part of the claim, paid money into court, and pleaded, as to the residue, "never indebted" and payment. He then obtained an order under the Common Law Procedure Act, 1854, s. 3, compulsorily referring the action, on the ground that the matter in dispute was wholly or in part one of "mere account," which could not conveniently be tried by a jury. The plaintiffs applied to rescind this order, alleging that they proposed at the trial to attempt to prove that the defendant had been guilty of fraudulent conduct by the secret abstraction of their gas, and that upon this question, which would regulate the damages awarded, they were entitled to the verdict of a jury:—*Held*, that the nature of the dispute was not altered because the plaintiffs imputed fraud to the defendant in relation to it: that, substantially, the matter was one wholly or in part of mere account, which could not be conveniently tried by a jury, and that therefore the order was rightly made (*The Birmingham and Staffordshire Gas Co.* v. *Ratcliffe* (1871), L. R. 6 Ex. 224).

Power to take away pipes, etc., when supply of gas discontinued.

17. [*In all cases in which the undertakers are authorised to cut off and take away the supply of gas from any house or building or premises, under the provisions of this or the special Act, the undertakers, their agents or workmen, after giving twenty-four hours previous notice to the occupier, may enter into any such house, building, or premises, between the hours of nine in the forenoon and four in the afternoon, and remove and carry away any pipe, meter, fittings, or other works the property of the undertakers.*]

This section is repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66), except so far as incorporated with special Acts, to which the Gasworks Clauses Act, 1871, does not apply. See s. 22 of the Act of 1871, which gives a similar power to undertakers, *post*, p. 234.

And with respect to waste or misuse of the gas, or injury to the pipes and other works, be it enacted as follows:

Penalty for fraudulently using the gas of the undertakers.

18. Every person who shall lay or cause to be laid any pipe to communicate with any pipe belonging to the undertakers without their consent, or shall fraudulently injure any such meter as aforesaid, or who, in case the gas supplied by the undertakers is not ascertained by meter, shall use any burner other than such as has been provided or approved of by the undertakers, or of larger dimensions than he has contracted to pay for, or shall keep the lights burning for a longer

Sect. 18. time than he has contracted to pay for, or who shall otherwise improperly use or burn such gas, or shall supply any other person with any part of the gas supplied to him by the undertakers, shall forfeit to the undertakers the sum of five pounds for every such offence, and also the sum of forty shillings for every day such pipe shall so remain, or such works or burner shall be so used, or such excess be so committed or continued, or such supply furnished; and the undertakers may take off the gas from the house and premises of the person so offending, notwithstanding any contract which may have been previously entered into.

See *Birmingham and Staffordshire Gas Co.* v. *Ratcliffe* (1871), cited under s. 16, *ante*, p. 189.

A consumer, being dissatisfied with the measurement shown by the company's meter, put up a second meter of his own without the consent of the company, and was summoned and fined under the above section (*Re Gaslight and Coke Co.*, Jl. of G. L., June 16th, 1891, vol. 57, p. 1196). And see *Johnson* v. *Gunnhill*, *post*, p. 229.

There is nothing in the nature of gas to prevent it being the subject of larceny; therefore a conviction for stealing a quantity of gas by fraudulently arranging the pipes, so that a large quantity did not pass through the meter to be registered, was held to be good (*R.* v. *White* (1853), 22 L. J. M. C. 123). See also *R.* v. *Firth* (1865), L. R. 1 C. R. R. 172. Water, also, may be the subject of larceny (*Ferens* v. *O'Brien* (1883), 11 Q. B. D. 21).

The appellants, on their own premises, substituted for part of a gas pipe belonging to the respondents a larger pipe for the purpose of increasing their supply. This was done without any fraud, waste, or misuse of the gas, but without the respondents' consent, although notice of intention to disconnect the pipe from the meter was duly given under s. 15 of the Gasworks Clauses Act, 1871. Upon summons, a stipendiary magistrate convicted the appellants under s. 18:—*Held*, upon a case stated, that the appellants had, within the meaning of that section, caused to be laid a pipe to communicate with a pipe belonging to the undertakers without their consent, and that the magistrate rightly convicted them (*Wood* v. *West Ham Gas Co.* (1885), 52 L. T. 817; *S. C.*, *sub nom. West Ham Gas Co.* v. *Harrison, Wood & Co.* (1885), 1 T. L. R. 558).

Since the passing of the Judicature Act, 1873, s. 25 (11), where there is any variance between the rules of equity and the rules of common law with reference to the same matter, the rules of equity shall prevail. In *Imperial Gaslight and Coke Co.* v. *London Gaslight Co.* (1854), 10 Ex. 39, which arose before the passing of that Act, it was decided at common law that it was no answer to a plea of the statute of limitations that the plaintiff was prevented by the fraud of the defendants from knowing of the cause of action until after the time of limitation had run. The plaintiffs alleged that the defendants had fraudulently abstracted gas from their mains and concealed the fact. (A count, however, for cutting into the mains, to which the statute was not pleaded, was held good.) A similar decision was given in *Hunter* v. *Gibbons* (1856), 1 H. & N. 459. But equity always relieved against fraud, and since the Judicature Act, in cases where the wrongful act is not merely not found out, but can be affirmatively shown to have been fraudulently concealed by the wrongdoer, that will afford a good answer to the statute of limitations (*Gibbs* v. *Guild* (1882), 9 Q. B. D. 59; *Armstrong* v. *Milburn* (1886), 54 L. T. 723 (C. A.); and see *Moore* v. *Knight*, [1891] 1 Ch. 547; *Thorne* v. *Heard*, [1895] A. C. 495; *Betjemann* v. *Betjemann*, [1895] 2 Ch. 474; and *Bulli Mining Co.* v. *Osborne*, [1899] A. C. 351).

A. stole gas for the use of a manufactory by means of a pipe which drew off the gas from the main without allowing it to pass through the meter. The gas from this pipe was burnt every day and turned off at night. The

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pipe was never closed at its junction with the main, and consequently always remained full of gas:—*Held*, upon an indictment, that as the pipe always remained full, there was, in fact, a continuous taking of gas, and not a series of separate takings, and therefore that the circumstances attending the abstraction of gas for the whole of the time were rightly given in evidence; and the prosecutor was not called upon to elect to proceed on one particular act of taking, or on any three acts committed within the space of six months from the first to the last of such acts, under 24 & 25 Vict. c. 96, s. 6 (*R.* v. *Firth* (1869), L. R. 1 C. C. 172).

Penalty for wilfully damaging pipes.

19. Every person who shall wilfully remove, destroy, or damage any pipe, pillar, post, plug, lamp, or other work of the undertakers for supplying gas, or who shall wilfully extinguish any of the public lamps or lights, or waste or improperly use any of the gas supplied by the undertakers, shall for each such offence forfeit to the undertakers any sum not exceeding five pounds, in addition to the amount of the damage done.

Satisfaction for accidentally damaging pipes.

20. Every person who shall carelessly or accidentally break, throw down, or damage any pipe, pillar, or lamp belonging to the undertakers, or under their control, shall pay such sum of money by way of satisfaction to the undertakers for the damage done, not exceeding five pounds, as any two justices or the sheriff shall think reasonable.

In a case decided under the similarly worded section (s. 207) of the Metropolitan Management Act, 1855, it was held that a master was not liable to summary proceedings in respect of damages to a lamp caused accidentally by his servant (*Harding* v. *Barker* (1889), 53 J. P. 308). The lamp post of a gas company having been injured by the negligent driving of the defendant's servant, proceedings were taken under the above section against the defendant, before a magistrate who held that the remedy provided by the section was one against the person who did the act complained of, and not against the master, and the summons was dismissed. The gas company then brought an action in the county court, against the master to recover damages for injuries to the lamp post caused by the negligent driving of the servant. It was contended, on behalf of the defendants, that the plaintiffs' common law remedy by action for damages was ousted by s. 20, which provides a specific remedy, and reliance was placed on *St. Pancras Vestry* v. *Batterbury* (1857), 2 C. B. (N. S.) 477. The divisional court, on appeal from the county court, held that the plaintiffs' common law remedy by action for damages was not ousted, and that the principle in *St. Pancras Vestry* v. *Batterbury*, only applied where a new offence was created, and in the same Act a remedy was given (*Crystal Palace Gas Co.* v. *Idris* (1900), 82 L. T. 200). See also as to the remedy by action in respect of damage to lamps, *Walton* v. *Vanguard Motor Bus Co.* (1908), 72 J. P. 505; *Barnes U. D. C.* v. *London General Omnibus Co.* (1908), 73 J. P. 68.

A driver may be made responsible under the section, although the lamp is placed in an unsafe position and is broken without any negligence on his part (*Burgess* v. *Morris* (1897), 61 J. P. 553). If a summons charge damage as done unlawfully and carelessly, it need not say "carelessly or accidentally," and a conviction will be good if there be evidence of carelessness, though short of what might be called negligence (*Ashton* v. *Eccles Corporation* (1907), 71 J. P. 55).

Nuisance from Gas.

And with respect to the provision for guarding against fouling water, or other nuisance from the gas, be it enacted as follows:

Penalty on undertakers for causing water to be corrupted.

21. If the undertakers shall at any time cause or suffer to be brought or to flow into any stream, reservoir, or aqueduct, pond, or place for water, or into any drain communicating therewith, any washing or other

Sect. 21. substance produced in making or supplying gas, or shall wilfully do any act connected with the making or supplying of gas whereby the water in any such stream, reservoir, aqueduct, pond or place for water shall be fouled, the undertakers shall forfeit for every such offence the sum of two hundred pounds.

By s. 25, it is provided that whenever any water within the limits of the special Act shall be fouled by the gas of the undertakers, they shall be liable to a penalty.

By s. 68 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), any person engaged in the manufacture of gas who—

(1) Causes or suffers to be brought or to flow into any stream reservoir aqueduct pond or place for water, or into any drain or pipe communicating therewith, any washing or other substance produced in making or supplying gas; or

(2) Wilfully does any act connected with the making or supplying of gas whereby the water in any such stream reservoir aqueduct pond or place for water is fouled,

shall forfeit for every such offence the sum of £200, and, after the expiration of twenty-four hours notice from the local authority, or the person to whom the water belongs, in that behalf, a further sum of £20 for every day during which the offence is continued, or during the continuance of the act whereby the water is fouled.

Every such penalty may be recovered, with full costs of suit, in any of the superior courts, in the case of water belonging to or under the control of the local authority by the local authority, and in any other case by the person into whose water such washing or other substance is conveyed or flows or whose water is fouled by any such act as aforesaid, or in default of proceedings by such person, after notice to him from the local authority of their intention to proceed for such penalty, by the local authority; but such penalty shall not be recoverable unless it be sued for during the continuance of the offence, or within six months after it has ceased.

Similar, but not identical, sections occur in the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76) (s. 52), and in the Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17) (s. 62). And see Rivers Pollution Prevention Act, 1876 (39 & 40 Vict. c. 75), s. 4.

Several enactments for the protection of water companies in the metropolis will be found in the Metropolis Gas Act, 1860, *post*, p. 271.

The Public Health (Scotland) Act, 1897 (60 & 61 Vict. c. 38), ss. 127—129, impose penalties for causing water to be corrupted by gas washings, etc.

The directors of a gas company are responsible for the acts of their superintendents and engineer, under a general authority to manage the works, for any nuisance arising from any process employed by such manager, etc., although used without their knowledge, and contrary to the usual processes employed, and which the directors supposed not to be departed from (*Rex* v. *Medley* (1834), 6 C. & P. 292).

A private Act of Parliament, which incorporated a gas company and empowered them to make the necessary works, contained an enactment (s. 160), that if the company should at any time cause or suffer to be conveyed or to flow into any stream, etc., or place for water within the limits of the Act any washing produced in making gas, or do any act to the water contained in any such stream, etc., or place for water, whereby the water therein should be fouled or corrupted, then the company should forfeit for every such offence £200. Section 161 imposed an additional penalty of £20 per day for the continuance of such pollution more than twenty-four hours after notice. Section 165 made the company liable if any water was polluted by the escape of gas. The site of the gas tank was selected by an experienced engineer, and the company built it in a proper manner, and with all ordinary care and prudence. They knew that mines had been worked in the neighbourhood, but did not know that any mines had been worked under their own lands. After some years the gas tank cracked at the bottom, the washings produced in the process of making gas escaped, percolated underground through the earth, and polluted the water in the plaintiff's well. The company then found on inquiry that mines had been worked by strangers to them under part of their land and close up to their tank. The crack in the tank was caused by the subsidence of the soil, owing, in all probability, to the mining operations :—*Held*, that the company were liable, under s. 120, to the penalty of £200 for polluting the plaintiff's water by their gas washings (*Hipkins* v. *Birmingham and Staffordshire Gaslight Co.* (1860), 6 H. & N. 250).

In *Millington* v. *Griffiths* (1874), 30 L. T. 65, it was held that a well which, on account of its having become contaminated, had been disused by the owner for several years, and had been covered over, did not cease to be a well within the meaning of the Lighting and Watching Act, 1833, which imposed a penalty of £200 on any gas company "who shall suffer any washings . . . to be conveyed into any well." See s. 26, *post*, p. 197, giving to the person to whom the water supposed to be fouled shall belong, power to dig up the ground and examine pipes of the undertakers, after certain notices and on certain conditions, for the purpose of ascertaining the cause of contamination.

The Thames Conservancy Act, 1894 (57 & 58 Vict. c. clxxxvii.), contains stringent provisions for preventing pollution of the river Thames, as by that Act defined, by refuse from gasworks or otherwise (ss. 90—108). See provisions in the Lee Conservancy Act, 1900 (63 & 64 Vict. c. cxvii.), ss. 27—32. The Salmon Fishery Act, 1861 (24 & 25 Vict. c. 109), also contains an enactment against pollution (s. 5).

A gas company permitted offensive matter, which "largely consisted of liquid ammonia," to pass into the sewers of a town, and thence through the sewers and a sewage farm into a stream which was a tributary of the river Thames. The Thames Conservators, under their Act of 1894, s. 92, proceeded against the gas company for penalties, and the company were fined. They further proceeded against the town in whom were vested the sewers and the sewage farm ; but the court held, on a case stated by the justices, that in the circumstances of the case the town had not wilfully allowed the offensive matter to enter the stream (*High Wycombe Corporation* v. *Thames Conservators* (1898), 79 L. T. 463 ; and see *Southall Norwood Urban District Council* v. *Middlesex County Council*, cited, *post*, p. 731).

It was held to be no defence to an action for damages, where a river was fouled by substances of poisonous, deleterious, and impure character being thrown into it necessarily and unavoidably in the carrying on of a business, that the defendant's trade or manufacture, by which the river was fouled, was carried on in a reasonable and proper manner, and in a proper place, and was carried on for purposes necessary and useful to the community (*Bamford* v. *Turnley* (1862), 3 B. & S. 66 ; overruling *Hole* v. *Barlow* (1858), 11 C. B. (N.S.) 334). See more fully, *post*, pp. 198, 199. As to when the court will interfere by injunction, see *Attorney-General* v. *Gee* (1870), L. R. 10 Eq. 131 ; and *Goldsmid* v. *Tunbridge Wells Improvement Commissioners* (1866), L. R. 1 Ch. 349, *per* Turner, L.J.

Penalty to be sued for in superior court within six months.

22. The said penalty of two hundred pounds shall be recovered, with full costs of suit, in any of the superior courts, by the person into whose water such washing or other substance shall be conveyed or shall flow, or whose water shall be fouled by any such act as aforesaid ; but such penalty shall not be recoverable unless it be sued for during the

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By a local Act passed before the date of this Act, a penalty (recoverable by a common informer) was imposed on any gas or other company for suffering any impure matter to flow into any stream. By a later special Act of the same company the Act of 1847 was incorporated:—*Held*, that the section in the text repealed *pro tanto* the section in the local Act, and therefore that the penalties were not cumulative (*Parry* v. *Croydon Commercial Gas Co.* (1863), 15 C. B. (N.S.) 568).

Daily penalty during the continuance of the offence.

23. In addition to the said penalty of two hundred pounds (and whether such penalty shall have been recovered or not) the undertakers shall forfeit the sum of twenty pounds (to be recovered in like manner) for each day during which such washing or other substance shall be brought or shall flow as aforesaid, or the act by which such water shall be fouled shall continue, after the expiration of twenty-four hours from the time when notice of the offence shall have been served on the undertakers by the person into whose water such washing or other substance shall be brought or shall flow, or whose water shall be fouled thereby, and such penalty shall be paid to such last-mentioned person.

Daily penalty during escape of gas after notice.

24. Whenever any gas shall escape from any pipe laid down or set up by or belonging to the undertakers, they shall, immediately after receiving notice thereof in writing, prevent such gas from escaping; and in case the undertakers shall not within twenty-four hours next after service of such notice effectually prevent the gas from escaping, and wholly remove the cause of complaint, they shall for every such offence forfeit the sum of five pounds for each day during which the gas shall be suffered to escape after the expiration of twenty-four hours from the service of such notice.

Liability for escape of gas.

A gas company, incorporated by Act of Parliament, had for some years supplied gas to a house belonging to the plaintiff, the only means of shutting it off being by a stop-cock within the house, the key of which was kept by the occupier. The last tenant, on quitting, gave notice to the company that he should not require any further supply; and one of the company's workmen, at his request, removed a chandelier from one of the rooms, leaving the end of the pipe properly secured. The internal fittings were the property of the plaintiff. Whilst the house remained untenanted, the gas by some unexplained means escaped, and an explosion took place, by which the house was considerably damaged. In an action for damages brought against the company, alleging a breach of duty on their part in not taking proper means to prevent the influx of the gas into the house, it was held that a nonsuit was rightly directed on the above facts (*Holden* v. *Liverpool Gas Co.* (1846), 3 C. B. 1).

A declaration stated that the plaintiff was possessed of premises, that the defendant was employed in laying on gas to the premises adjoining, and that he did the work so negligently that the gas escaped and ignited, and the premises adjoining the plaintiff's were set on fire, and thereby his premises were set on fire and burnt:—*Held*, that the declaration disclosed a good cause of action; that it was unnecessary to negative negligence in the owner of the adjoining house in not putting out the fire before it communicated with the plaintiff's house (*Blenkiron* v. *Great Central Gas Consumers Co.* (1863), 3 L. T. (N.S.) 317).

In an action against a gas company for negligently allowing the escape of gas from their main into premises where lights were known to be burning, it was shown that the gas found entrance through an open window nearly level with the trench from the main, after a hole had been made in the main for the insertion of the service pipe:—*Held*, that even if the jury thought that the gas entered in the manner alleged, it was a question for them whether the company's men might reasonably have foreseen it, and were bound to have the window closed (*S. C.*, 2 F. & F. 437).

A gas company is bound to keep up such a reasonable inspection of their mains and pipes as may enable them to detect when there is such an escape of gas, by fracture or imperfection of pipes, as may lead to danger of an explosion; and if an explosion take place from a fracture or defect which has existed for several days, during which time it has also been discoverable by reason of the smell of the escaped gas, and would have been discovered by proper inspection, that is evidence of negligence on the part of the company; nor is it enough to relieve them from liability that upon notice of the escape they sent a workman to repair the defect, he arriving too late to do so (*Mose* v. *Hastings and St. Leonards Gas Co.* (1865), 4 F. & F. 324). *Cf.* the summing up of Huddleston, B., in *Snook* v. *Grand Junction Waterworks Co.* (1886), 2 T. L. R. 308.

Owing to excavations made by the Commissioners of Sewers within two and a half inches of a gas main embedded in a highway at a depth of ten and a half inches, one of the gas pipes was deprived of support from beneath. The weight of the traffic above cracked the pipe, and an escape and accumulation of gas occurred for two or three days, resulting in an explosion which injured a man passing. The gas company were unaware of the escape of gas, as well as of the excavation, of which they had received no notice. The county court judge found that there had been negligence, and gave a verdict and judgment for the plaintiff. On appeal to a Divisional Court, it was contended for the company that actual negligence must be proved, and that there had been no evidence of it, and further that s. 24 of the Gasworks Clauses Act, 1847, imposed a daily penalty during the escape of gas after notice, and that this was the only liability imposed upon the defendants in the event of an escape of gas:—*Held*, that the character of the crack in the pipe, the length of time the gas was escaping, and the absence of anyone on behalf of the gas company at the time of the excavation, constituted evidence of negligence on their part, and the appeal was dismissed (*Price* v. *South Metropolitan Gas Co.* (1895), 65 L. J. Q. B. 126). *Cf. Stacey* v. *Gas Light and Coke Co.* (1910), 9 L. G. R. 174.

Conduits for telephone wires were laid in the footway of a public street and at intervals small boxes were let in through which the wires passed. These boxes were so placed for the purpose of enabling access to be obtained for the purpose of localising and repairing any faults. In the neighbourhood were various gas mains and supply pipes. Owing to leakage from the pipes, gas escaped into and accumulated in the telephone boxes in Glasshouse Street, Regent Street. It appeared that written notice of this escape of gas had been given in July to the gas company, who endeavoured to find the escape of gas, but failed to do so, and nothing further was done until October, when workmen in the employment of the Post Office had to do some work in connection with one of these telephone boxes and one of them had occasion to apply a light to the orifice of the box containing the cables. A series of violent explosions immediately occurred whereby plaintiffs were injured. Darling, J., left the case to the jury, who found negligence on the part of the gas company and gave a verdict for the plaintiffs. The Court of Appeal affirmed this judgment (*Ogden* v. *Gaslight and Coke Co.*, Times, 4th July, 1906).

The learned judge at the conclusion of the last-mentioned case suggested that it might be well worth while for the authorities to consider whether these dangers could not be obviated by the same sort of ventilation being applied to telephone boxes as was applied to electric light boxes, and counsel undertook that the matter should be brought to the attention of the Postmaster-General. On 31st March, 1905, Sir T. Dewar asked the Postmaster-General whether his attention had been called to a recent action to recover damages for personal injuries sustained through the explosion of gas in a telephone inspection

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chamber fixed in the footway in Regent Street; and, seeing that both judge and jury had expressed the opinion that, in the interests of public safety, the accumulation of gas in these telephone inspection chambers should be prevented by a system of ventilation, whether he would state if he proposed to adopt the suggestion. Lord STANLEY replied that the case had been carefully considered. He feared that ventilation of the inspection chambers was not practicable, as he did not think the local authorities would consent to his fixing ventilating pillars in the footways, and the owners of private houses would not allow him to carry pipes up the walls. Ventilating covers could not be adopted, because they would not keep the cables free from mud and water. He was proposing to lay down certain precautions to be taken by his staff when opening manholes in which the presence of gas was suspected; but so far as the facts were known to him, no precautions taken by his employees would have prevented the recent explosions in Regent Street. Hansard, vol. 144, p. 19.

A service pipe became corroded and caused an escape of gas which exploded and caused damage to adjoining property. The jury found negligence against the undertakers, and the plaintiff recovered a verdict for £260 and costs (*Partington* v. *Leigh Corporation*, Jl. G. L., November 21st, 1905, p. 549). The judge granted a stay of execution with a view to an appeal on the legal points raised.

The defendants, a gas company, having contracted to supply the plaintiff with a service pipe from their main to the meter on his premises, laid down a defective pipe from which the gas escaped. A workman in the employ of a gasfitter, employed by the plaintiff to lay down the pipes leading from the meter to different parts of the premises, negligently took a lighted candle for the purpose of finding out whence the escape proceeded. An explosion then took place, whereby damage was occasioned to the plaintiff's premises, to recover compensation for which the plaintiff brought his action against the defendants:—*Held*, that the damage was not too remote, and that the plaintiff, not being the master of the workman, could not be considered as contributing to the damage by reason of his act, and was, therefore, entitled to recover (*Burrows* v. *March Gas and Coke Co.* (1872), L. R. 7 Ex. 96).

The plaintiff was the owner of a new house, which was divided into two separate flats, an upper and a lower one, each flat having a separate entrance into the street. When the house was built the plaintiff laid a service pipe for gas from the street under the hall door steps, inside the wall of the house, to the upper flat. The tenant to whom the upper flat was let gave notice to the defendants, under s. 11 of the Gasworks Clauses Act, 1871, requiring them to give a supply of gas to the flat. The defendants thereupon made the connection by a pipe from the main under the street to the service pipe, and supplied and fixed a meter in the flat, and turned on the gas. About an hour afterwards an explosion took place, caused by an escape of gas owing to a defect in the service pipe, which the plaintiff had laid, leading to the meter. In an action to recover for the damage done to the house by the explosion, the plaintiff contended that it was the duty of the defendants to see that the pipes by which they supplied the gas to the flat were fit for the purpose; that as the gas belonged to the defendants until it passed through the meter, it was not supplied to the flat until then; and that if the defendants chose to make use of a pipe not laid by themselves, it was their duty to test it to see if it was in good condition. At the trial, COLLINS, J., ruled that there was no duty on the defendants to test the service pipe, and, the jury having found that the defendants had made the connections properly and had not caused the defect in the service pipe, judgment was entered for the defendants. On motion for a new trial, the Court of Appeal dismissed the application, holding that there was no duty on the defendants to test the service pipe laid by the plaintiff, and the case was distinguished from *Burrows* v. *March Gas Co.*, where the service pipe was supplied and laid by the gas company (*Henderson* v. *Newcastle and Gateshead Gas Co.* (1893), 37 Sol. J. 403).

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Owing to a defect in the joining of gas mains, gas escaped into a sewer and thence into a private house, injuring the plaintiff and his family. It was held that the undertakers were liable (*Crowley* v. *Youghal Town Commissioners* (1897), 30 I. L. T. 151).

Owing to an escape of gas in the neighbourhood, a manager of a gas company entered into an adjoining shop to examine the supply pipes with a lighted match which ignited the gas accumulated under the shop floor and caused a serious explosion, whereby two working men in the plaintiff's employ were injured:—*Held*, that the gas company were liable (*Hughes* v. *Ballynahinch Gas Co.* (1899), 33 I. L. T. R. 74). A ruling of Palles, C.B., as to the measure of damage in such cases, *ib.*

As to the common law liability of a gas company for nuisances, see the note under s. 29, *post*, p. 198.

Penalty if water contaminated by gas.

25. Whenever any water within the limits of the special Act shall be fouled by the gas of the undertakers, they shall forfeit to the person whose water shall be so fouled for every such offence a sum not exceeding twenty pounds, and a further sum not exceeding ten pounds for each day during which the offence shall continue after the expiration of twenty-four hours from the service of notice of such offence.

See provisions of the Public Health and other Acts cited, *ante*, p. 192. And see hereon *Batcheller* v. *Tunbridge Wells Gas Go.*, cited at p. 199.

Power to examine gas pipes to ascertain cause of contamination, if notice be given of the same.

26. For the purpose of ascertaining whether such water be fouled by the gas of the undertakers the person to whom the water supposed to be fouled shall belong may dig up the ground and examine the pipes, conduits and works of the undertakers; provided that such person, before proceeding so to dig and examine, shall give twenty-four hours notice in writing to the undertakers of the time at which such digging and examination is intended to take place, and shall give the like notice to the persons having the control or management of the road, pavement, or place where such digging is to take place; and they shall be subject to the like obligation of reinstating the said road and pavement, and the same penalties for delay or any nonfeasance or misfeasance therein, as are hereinbefore provided with respect to roads and pavements broken up by the undertakers for the purpose of laying their pipes.

See a similar section (s. 65) in the Waterworks Clauses Acts, 1847.

Expenses to abide result of examination.

27. If upon any such examination it appeared that such water has been fouled by any gas belonging to the undertakers, the expenses of the digging, examination, and repair of the street or place disturbed in any such examination shall be paid by the undertakers; but if upon such examination it appear that the water has not been fouled by the gas of the undertakers, the person causing such examination to be made shall pay all such expenses, and shall also make good to the undertakers any injury which may be occasioned to their works by such examination.

How expenses to be ascertained.

28. The amount of the expenses of every such examination and repair, and of any injury done to the undertakers, shall, in case of any dispute about the same, together with the costs of ascertaining and recovering the same, be ascertained and recovered in the same manner as damages

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See s. 40, *post*, p. 214, and notes thereto.

Nothing to exempt undertakers from being indicted for a nuisance.

29. Nothing in this or the special Act contained shall prevent the undertakers from being liable to an indictment for nuisance, or to any other legal proceeding to which they may be liable, in consequence of making or supplying gas.

See also s. 9 of the Act of 1871, which also provides that the undertakers shall not be exonerated "from any indictment, action, or other proceeding for nuisance." In *Jordeson* v. *Sutton, Southcoates, and Drypool Gas Co.*, [1899] 2 Ch., at p. 236, LINDLEY, M.R., points out that s. 9 of the Act of 1871 is wider than s. 29 of the Act of 1847, which "may perhaps be confined to nuisances by gas."

Works authorised by Parliament and carried on without negligence may involve a nuisance, for which a company may not be liable (*Brand* v. *Hammersmith Rail. Co.* (1868), L. R. 4 H. L. 171 (vibration occasioned, without negligence, by the passing of trains after a railway was brought into use); *L. B. & S. C. Rail. Co.* v. *Truman* (1885), 11 App. Cas. 45 (yard for cattle traffic which was a nuisance to neighbours)). Where the terms of a statute are not imperative, but permissive, there is a distinction (*Metropolitan Asylum District Managers* v. *Hill* (1881), 6 App. Cas. 193). See also *Canadian Pacific Rail. Co.* v. *Roy*, [1902] A. C. 220; *Withington Local Board* v. *Manchester Corporation*, [1893] 2 Ch. 19; *Attorney-General* v. *Manchester Corporation*, [1893] 2 Ch. 87; *Attorney-General* v. *Guildford Joint Hospital Board* (1895), 12 T. L. R. 54; *Harrop* v. *Ossett (Mayor of)* (1898), 14 T. L. R. 308; *Attorney-General* v. *Rathmines and Pembroke Joint Hospital Board*, [1904] 1 I. R. 161 and *Attorney-General* v. *Nottingham Corporation*, [1904] 1 Ch. 673.

Where undertakers are bound by a nuisance clause similar to that in the text they may be liable for injury caused by the nuisance irrespective of any question of negligence (*Midwood* v. *Manchester Corporation*, [1905] 2 K. B. 597).

Nuisance is anything which renders the enjoyment of life and property uncomfortable (*per* Lord MANSFIELD, *R.* v. *White* (1756), 1 Burr. 337). The matter complained of may be a nuisance although it be not injurious to health (*Ibid.; Bishop Auckland L. B.* v. *Bishop Auckland Iron Co.* (1882), 10 Q. B. D. 138; and *Gaskell* v. *Bayley* (1874), 30 L. T. (N.S.) 516).

By the special Act of a company which incorporated the Gasworks Clauses Act, 1847, it was enacted that the gas should be of a certain purity:—*Held*, by FRY, J., that the company was not justified in causing a nuisance, even if the gas could not be made of sufficient purity without so doing (*Attorney-General* v. *Gaslight and Coke Co.* (1877), 7 Ch. D. 217; *cf. Metropolitan Asylum District Managers* v. *Hill* (1881), 6 App. Cas. 193).

A gas company were authorised by their special Act, which incorporated the general Acts of 1847 and 1871, to construct gasholders and other works on certain land. They proceeded to excavate the land for the purpose of erecting a gasholder. In doing so, they penetrated an underground stratum of quicksand, or sand loaded with stagnant water, geologically known as running silt, which extended into the plaintiff's land as well as their own, the silt or sand largely preponderating over the water. In draining their excavation, the defendants withdrew a large quantity of the running silt from under the plaintiff's land, and thus caused a subsidence of the surface, with consequent structural injury to his houses. The Court of Appeal held that the company's works occasioned a nuisance within the meaning of the nuisance clause in the general Acts. A majority of the judges also held that the plaintiff's land was, under the circumstances, supported not by a stratum of water only, but by a bed of wet sand or running silt, and that, as the subsidence of the plaintiff's land had been caused by the withdrawing of this support, an actionable nuisance at common law had been committed, and that the plaintiff was entitled to damages (*Jordeson* v. *Sutton, Southcoates, and Drypool Gas Co.*,[1899] 2 Ch. 217). This case shows that the nuisance referred to in s. 29 of the Act of 1847, and s. 9 of the Act of 1871, may arise from the construction of works as well as from the process of manufacturing gas, and it also shows that the sections referred to include private nuisance as well as public nuisance.

Under statutory powers the Municipal Corporation of Birkenhead acquired, in connection with their waterworks undertaking, a piece of land distant 150 yards from the plaintiff's dwelling-house and thereon sank a well or bore-hole, and pumped thence large quantities of water which brought with it large quantities of wet running silt. The foundation of the plaintiff's house was thus injured. The plaintiff claimed compensation under s. 12 or s. 6 of the Waterworks Clauses Act, 1847; and arbitrators were duly appointed. Upon their differing the umpire made his award in the form of a special case. He assessed the amount of compensation at £1,200 if the plaintiff was entitled to recover. He found that the defendants were authorised by their Act to do what they had done; that the damage was not caused by the abstraction of water merely but "by the abstraction of the water which carried with it silt from under the premises of the claimant"; and that the weight of the buildings had not caused the damages. BRAY, J., held that the plaintiff was entitled to recover (*Fletcher* v. *Mayor of Birkenhead* (1906), 1 K. B. 605; affirmed on appeal, [1907] 1 K. B. 205).

The plaintiff obtained a supply of water to his house from a well by means of a pipe laid in the main road. The defendants were a statutory gas company with whose special Act the general Acts of 1847 and 1871 were incorporated. The plaintiff brought an action for injunction complaining that owing to the negligence of the company and to the defective state of their gas pipes the water coming to his house was polluted with coal gas and rendered unfit for use. The company sought to prove (1) that these pipes were well laid and that in course of time some escape or diffusion of gas was unavoidable; (2) that the plaintiff's water pipe was itself defective; (3) that the plaintiff's water supply was otherwise unfit for domestic purposes. The court held these contentions to be irrelevant. Inasmuch, however, as the nuisance had ceased after action brought, injunction was not granted; but the court made a declaration that the defendants were not entitled to pollute the plaintiff's water (*Batcheller* v. *Tunbridge Wells Gas Co.* (1901), 65 J. P. 680).

The South Shields Gas Company were authorised to supply gas within their area, and afterwards the corporation obtained a provisional order to supply electricity. In both cases the usual statutory powers to break up streets applied. Owing to the breakage of a gas pipe an escape of gas was caused which found its way into a street box. An explosion of this gas was caused by a spark from the switch connected with an arc lamp pillar. The explosion caused damage to the street box and conduits amounting to £227; and this sum the corporation sought to recover from the South Shields Gas Company. No negligence on the part of the gas company was alleged. The case was tried before Mr. Commissioner A. T. Lawrence, K. C., without a jury. It appeared from the evidence that a builder was employed by the owner or occupier of certain premises to connect their drains with the main sewer. For this purpose he applied to and obtained permission from the borough engineer and surveyor to break up the street. The work was done and the street was reinstated under supervision of the local authority. It was in fact so imperfectly done that in the result the gas pipe became fractured. The learned commissioner held that the cause of the accident was the inadequate way in which the trench had been filled in, and that the work was not properly supervised by the officer of the corporation who had the supervision of it. Judgment was therefore given for the defendants with costs (*South Shields Corporation* v. *South Shields Gas Co.*, Jl. of G. L., March 10th, 1903, p. 643).

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In *Imperial Gaslight and Coke Co.* v. *Broadbent* (1859), 7 H. L. Cas. 600, the plaintiff being a market gardener at Fulham, brought an action for damages caused to his business by the operations which were carried on at the defendant company's gasworks, which were at first 240 feet off, and had lately been brought nearer to his market garden by the building of a new retort house. The action was referred to arbitration, and nearly two years elapsed before the award was made. The arbitrator awarded damages up to the date of his award. The defendants then still further increased their works. (See the report in 29 L. J. Ch. 377.) The plaintiffs thereupon applied for an injunction. The Vice-Chancellor treated the finding of the arbitrator as equivalent to the finding of a jury, and granted a perpetual injunction. This decision was afterwards confirmed by the Lord Chancellor. On appeal to the House of Lords it was held that there had not been any such acquiescence as to deprive the plaintiff of his right to the injunction, and the orders appealed from were therefore affirmed. The case further decided that the mischief complained of, not having been authorised by the defendants' Acts, the plaintiff's common law remedy was properly applicable, and that he was not left to seek compensation under s. 68 of the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18).

When a trade is a nuisance.

It had been decided in *Hole* v. *Barlow* (1858), 4 C. B. (N.S.) 334, that no action lies for the reasonable exercise of a lawful trade in a convenient and proper manner; and this ruling appears to have been based upon a passage in Comyn's Digest, tit. *Action on the case for a Nuisance* (*C*). It subsequently appeared from the judgment of MARTIN, B., in *Stockport Waterworks Co.* v. *Potter* (1861), 7 H. & N. 160, that the jury, in the case of *Hole* v. *Barlow*, found in fact that there was no nuisance; and it was held in the *Stockport Case* that the expression "convenient place" means a place where a nuisance will not be caused to another. Following on that came the case of *Bamford* v. *Turnley* (1862), 3 B. & S. 66, in which the Exchequer Chamber overruled the case of *Hole* v. *Barlow*, and decided that where a man by an act on his own land, such as burning bricks, causes so much annoyance to another in the enjoyment of a neighbouring tenement as to amount *primâ facie* to a cause of action, it is no answer that the act was done in a proper and convenient spot and was a reasonable use of the land: and further, that the fitness of the locality does not prevent the carrying on of an offensive though lawful trade from being a nuisance. This decision was followed by *Cavey* v. *Ledbitter* (1862), 13 C. B. (N.S.) 470, which is to the same effect. And in *Shotts Iron Co.* v. *Inglis* (1882), 7 App. Cas. 518, the House of Lords, referring to *Hole* v. *Barlow* as having been overruled, held that the calcining of iron ore in the open air in the neighbourhood of the respondent's land, whereby his ornamental plantations were being destroyed by fumes, was a nuisance. See also *Attorney-General* v. *Cole & Son*, [1901] 1 Ch. 205; *Colwell* v. *St. Pancras Borough Council*, [1904] 1 Ch. 707; 68 J. P. 286; *Knight* v. *Isle of Wight Electric Light and Power Co.* (1904), 68 J. P. 266.

In *St. Helen's Smelting Co.* v. *Tipping* (1865), 11 H. L. Cas. 642, it appeared that the plaintiff bought an estate in a neighbourhood where many manufacturing works were carried on. Among others there were the works of a copper smelting company. It was not proved whether these works were in actual operation when the estate was bought. The vapours from these works when they were in operation were proved to be injurious to the trees on the plaintiff's estate. At the trial the judge told the jury that (unless by a prescriptive right) every man must so use his own property as not to injure that of his neighbour; but that the law did not regard trifling inconveniences; everything must be looked at from a reasonable point of view, and therefore, in the case of an alleged injury to property, as from noxious vapours from a manufactory, the injury, to be actionable, must be such as visibly to diminish the value of the property; that locality and all other circumstances must be taken into consideration, and that in counties where great works had been and were carried on parties must not stand on extreme rights. The House of Lords held that the direction was right. In this case an important distinction was drawn between an action for a nuisance in respect of an act producing a material injury to property, and one brought in respect of an act producing personal discomfort. It was pointed out in the judgment of WESTBURY, L.C., that, as regards the latter, there were cases where one would have to submit to the discomfort of the circumstances of the place, but that where an occupation is carried on with the result of materially injuring neighbouring property a very different consideration arises. See *Sturgess* v. *Bridgman* (1879), 11 Ch. D. 865.

In a Belfast case, where the plaintiff complained of nuisance caused by large quantities of smoke, smut, colley and grime issuing from a retort house within 70 feet of the premises of the plaintiff, Barton, J., held that the facts proved established the plaintiff's case, and laid down certain principles applicable to such complaints in a busy industrial town. An injunction was granted (*Thompson* v. *Belfast Corporation*, Jl. of G. L., August 2nd, 1904, p. 338).

Other cases as to nuisances.

Where a prescriptive right to foul a stream has been acquired, the fouling must not be enlarged to the prejudice of others (*Crossley* v. *Lightowler* (1867), L. R. 2 Ch. 478; *Baxendale* v. *McMurray* (1867), L. R. 2 Ch. 790).

It has been held in Scotland that when a person has for forty years been committing a nuisance and polluting the atmosphere so as to injure his neighbour's property, the neighbour, having made no complaint during the forty years, cannot sustain an action unless the nuisance is substantially increased. It makes no difference that his own land has been used during the forty years for manufacturing purposes, and is now for the first time being used for residential purposes (*Harvie* v. *Robertson* (1903), 5 F. 338).

Injunction will not be granted in cases where the alleged injury is trifling and transient (*Attorney-General* v. *Cambridge Consumers Gas Co.*, and other cases cited *ante*, pp. 20—25). Where a maker of cocoa-nut matting, using chloride of tin in his bleaching liquid, complained of injury to his fabrics by reason of the chloride of tin being discoloured by sulphuretted hydrogen thrown off in a manufacturing process carried on by the defendant upon adjoining premises, and the evidence showed that, owing to the defendant's precautions, on three occasions only had an appreciable escape taken place, and then only from accidental defects which were immediately remedied—an injunction was refused without prejudice to an action at law (*Cooke* v. *Forbes* (1867), L. R. 5 Eq. 166). Anyone seeking an injunction to restrain an alleged future nuisance, whether public or private, must show a strong case of probability that the apprehended mischief will in fact arise (*Attorney-General* v. *Corporation of Manchester*, [1893] 2 Ch. 87). See also *Attorney-General* v. *Nottingham Corporation* and the cases cited therewith, *ante*, p. 198.

For a case in which the owner of an estate, on which over five hundred houses had been built on leases for ninety-nine years, sought to recover compensation from a gas company for alleged injury to his property by the manner in which the company's works were carried on, see *Chapman* v. *South Metropolitan Gas Co.*, Jl. of G. L., Feb. 28th, 1893, vol. 61, pp. 359, 415, 460.

The owner and occupier of a vacant piece of land in the metropolis surrounded it by a hoarding. People threw filth and refuse over and broke up the hoarding, so that the condition of the land and the use to which it was put constituted a continuing public nuisance. In an action by the Attorney-General (at the relation of the vestry of the parish), it was held that it was a common law duty of the owner of the piece of land to prevent it from being so used as to be a public nuisance, and that the Attorney-General was entitled to an injunction to enforce the performance of that duty (*Attorney-General* v. *Tod Heatley*, [1897] 1 Ch. 560). See further report in 75 L. T. 452. See sequel, 13 T. L. R. 220.

Action by local authority.

By the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 21 (1), it is provided that "Where any manufactory, building, or premises used for any trade, business process, or manufacture causing effluvia is certified to the sanitary authority by their medical officer of health, or by any two legally qualified medical practitioners, or by any ten inhabitants of the district of such authority, to be a nuisance or injurious or dangerous to the health of any of the inhabitants of the district, such authority shall make a complaint,

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and if it appears to the petty sessional court hearing the complaint that the trade, business process, or manufacture carried on by the person complained of is a nuisance, or causes any effluvia which is a nuisance or injurious or dangerous to the health of any of the inhabitants of the district, then, unless it is shown that such person has used the best practical means for abating the nuisance, or preventing or counter-acting the effluvia, the person so offending (being the owner or occupier of the premises, or being a foreman or other person employed by such owner or occupier) shall be liable to a fine not exceeding fifty pounds" . . .

See s. 114 of the Public Health Act, 1875, which is similar to but not absolutely identical with the above section.

Under the above section of the Act of 1891, six summonses were issued at the instance of the *Lewisham Borough Council* against the *Crystal Palace Gas Co.*, and were heard at the Greenwich Police Court before Mr. D'Eyncourt. At the earlier period of the proceedings the magistrate expressed himself satisfied that there was sufficient evidence of nuisance, but the company contended that they were using "the best practical means" in their process of gas purification. After much expert evidence and an adjournment under sub-s. (2) of sect. 21, and after certain changes had been made in the coal gas purifiers, the magistrate came to the conclusion that what had been done rectified the nuisance. Inasmuch as to attain this result the borough council had been put to considerable expense, an arrangement was effected on this head between the parties to the satisfaction of the magistrate, and in the final result the summonses were withdrawn. See the proceedings and evidence reported in the Jl. of G. L., Nov. 18th, 1902, pp. 135 *et seq.*

See also the sections (ss. 91 *et seq.*) of the Public Health Act, 1875, and ss. 2 *et seq.* of the Public Health (London) Act, 1891, relating to the summary abatement of nuisances.

Electric lighting provisional orders.

The Board of Trade prior to the passing of the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), always inserted in provisional orders under the Electric Lighting Acts, a provision to the effect that nothing in the order should exonerate the undertakers from any indictment, action, or other proceedings for nuisance. An enactment to that effect is now contained in s. 81 of the schedule to the Act of 1899.

Where an electric lighting company caused structural injury to a neighbouring house and annoyance and discomfort to the lessee, owing to excavations for the foundations of their engines and to vibration and noise from the working of the same, an injunction was granted (*Shelfer* v. *City of London Electric Lighting Co.*; *Meux's Brewery Co.* v. *City of London Electric Lighting Co.*, [1895] 1 Ch. 287). See further, [1895] 2 Ch. 388. See also *Knight* v. *Isle of Wight Electric Light and Power Co.* (1904), 68 J. P. 266; *Colwell* v. *St. Pancras Borough Council*, [1904] 1 Ch. 707; *Heath* v. *Brighton Corporation* (1908), 72 J. P. 225.

Public Authorities Protection Act, 1893.

The Public Authorities Protection Act, 1893, *post*, p. 1062, provides for a six months' limitation and other protection in the case of any action, prosecution, or other proceeding "against any person for any act done in pursuance or execution or intended execution of any Act of Parliament or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such act, duty, or authority."

Profits of the Company.

And with respect to the amount of profit to be received by the undertakers when the gasworks are carried on for their benefit, be it enacted as follows:

Profits of the company limited.

30. The profits of the undertaking to be divided amongst the undertakers in any year shall not exceed the prescribed rate, or where no rate is prescribed they shall not exceed the rate of ten pounds in the hundred by the year on the paid-up capital in the undertaking, which

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in such case shall be deemed the prescribed rate, unless a larger dividend be at any time necessary to make up the deficiency of any previous dividend which shall have fallen short of the said yearly rate.

The undertakers cannot pay the income tax in addition to the prescribed rate of dividend (*Ashton Gas Co.* v. *Attorney-General and Others*, [1906] A. C. 10). The undertakers are liable to pay income tax on the whole of the profits when such profits exceed the prescribed rate.

New capital.

When new or additional capital is authorised by Parliament the maximum rate of dividend on such capital is generally fixed at 7 per cent. on the ordinary and 5 per cent. on the preference shares. Since 1876 the sliding scale of price and dividend has been very generally (but not invariably) introduced. The following Standing Order of the House of Commons makes provision with regard to the sale of new shares by auction or tender, and also with regard to the sliding scale:

Gas or water companies—additional capital.

"188. In every bill by which an existing gas or water company is authorised to raise additional capital, provision shall be made for the offer of such capital by public auction or tender at the best price which can be obtained, unless the committee on the bill shall report that such provision ought not to be required, with the reasons on which their opinion is founded.

Sliding scale.

"In the case of every such gas bill it shall be competent to the committee so to regulate the price of the gas to be charged to consumers that any reduction of an authorised standard price shall entitle the company to make a proportionate increase of the authorised dividend, and that any increase above the standard price shall involve a proportionate decrease of dividend."

See also S. O. 140A of the House of Lords, which applies only to auction and tender, and not to sliding scale.

Liability of local authorities possessing gas or waterworks to income tax and other taxes.

The Corporation of Limerick having under the powers of their special Act purchased the Limerick Gasworks, manufactured and sold gas; and the surplus profits, after providing for certain charges and expenses, were applied, in pursuance of the provisions of the special Act, in reducing the town improvement rate:—*Held*, that the gasworks were not occupied for a "public purpose" within the meaning of the Valuation (Ireland) Act, 1854 (17 & 18 Vict. c. 8), s. 2, and were not, therefore, exempt from being rated (*Mayor, etc. of Limerick* v. *Commissioners of Valuation* (1872), Ir. R. 6 Q. B. 420). A harbour board was empowered by Act of Parliament to levy dock dues, etc., to be applied in maintaining the concern, and in paying interest on moneys borrowed; any surplus of income remaining after meeting these charges was directed to be applied in forming a sinking fund to extinguish the debt incurred in the construction of the docks:—*Held*, that the surplus was profit assessable to the income tax (*Mersey Docks and Harbour Board* v. *Lucas* (1883), 8 App. Cas. 891).

The burgh of Irvine, under statutory authority, supplied with water two outside authorities who contracted to pay for the same by levying a compulsory water rate:—*Held*, that as regards the burgh of Irvine, the payment, though derived from taxation, was profit and chargeable with income tax and (following *Mersey Docks and Harbour Board* v. *Lucas*, *supra*) that it was not a valid ground of exemption that the profit so earned was appropriated to a sinking fund (*Harris* v. *Corporation of Irvine* (1900) (Ct. Sess.), 2 F. 1080; 65 J. P. 663).

The Glasgow Water Commissioners were appointed under a local Act of Parliament, by which they were authorised to borrow money on annuities and mortgages, and to acquire the works of certain private water companies which had formerly supplied the city with water, and to bring in an additional supply of water. They were empowered to levy a compulsory rate within the municipal boundary, and also a rate on persons who chose to take the water outside the boundary, and to sell the water to manufacturers and others. The Act required the commissioners to levy a rate sufficient,

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along with the other income, to cover all actual expenses, including a sum of not less than 1 per cent. on the money borrowed, to be accumulated as a sinking fund for redemption of the annuities and mortgages, and to be applied to no other purpose, any balance to be applied to reduce the rate of the following year:—*Held*, that the surplus after paying expenses was not assessable as profits under the Income Tax Acts (*Glasgow Corporation Water Company* v. *The Solicitor of Inland Revenue* (1875), 2 C. of S. Cas., Rettie, 708). In a later case between the same parties it was held, that while the rates levied within the compulsory area were to be regarded as sums levied to defray the cost of water supply within the district, so that any surplus remaining over could not be regarded as profit, yet any surplus of rates above outlay collected beyond the compulsory area or from sales to manufacturers, was profit, which went to reduce the cost of water supply to those within the compulsory area, and was liable to assessment for income tax under Sched. D. (*Glasgow Water Commissioners* v. *Miller* (1886), 13 C. of S. Cas., Rettie, 489; 2 Tax Cas. 131). Waterworks commissioners were held liable to be assessed in respect of profits derived from selling water by meter to barracks within the area of compulsory supply (*Allan* v. *Hamilton Waterworks Commissioners* (1887), 51 J. P. 727; *cf. Attorney-General* v. *Black* (1871), L. R. 6 Ex. 308; *Attorney-General* v. *Scott* (1873), 28 L. T. 302; and *Mersey Docks and Harbour Board* v. *Lucas* (1883), 8 App. Cas. 891). The Glasgow Corporation Gas Commissioners were empowered to supply gas to the city and its suburbs. The receipts were to be applied: (1) in payment of incidental expenses; (2) in payment of expenses of management and maintenance; (3) in payment of annuities and interest on borrowed moneys; (4) in providing a sinking fund and carrying out extensions; (5) any surplus might be carried to the credit of the corporation for general purposes:—*Held*, that the surplus, including the sum set apart for the sinking fund, was assessable profit (*In re Glasgow Gas Commissioners* (1876), 1 Tax Cas. 122). An English company owning gasworks abroad was held chargeable for the whole profits under the first case of Sched. D., and not merely for the sums remitted to this country under the first case (*Imperial Continental Gas Association* v. *Nicholson* (1878), 37 L. T. 717). A corporation claimed to set off against its profits from market losses which it sustained in the utilization of sewage, in industrial schools, and in baths and parks. Set-off not allowed (*In re Corporation of Birmingham* (1876), 1 Tax Cas. 26). The Corporation of King's Lynn contributed £60,000 towards the making of a cut from the Wash to King's Lynn, and, to enable the corporation to repay the money borrowed for the purpose, the harbour moorings commissioners were empowered by Act of Parliament to levy dues for the use of the corporation on all ships using the cut:—*Held*, that the dues are profits assessable to the income tax (*Sowrey* v. *King's Lynn Harbour Moorings Commissioners* (1886), 2 Tax Cas. 201). A municipal corporation purchasing gasworks in a defective structural condition is not entitled, in the ascertainment of their profits for income tax purposes, to deduct sums set aside annually to be expended in future years on restoring the plant and apparatus (*Clayton* v. *Newcastle-under-Lyme Corporation* (1888), 2 Tax Cas. 416). By the Dublin Corporation Waterworks Act, 1861, the corporation were empowered to construct waterworks for the supply of water to the borough of Dublin and certain extra-municipal districts, and were authorised to borrow money for the purposes of the Act on the rates leviable under it, and were empowered to levy certain rates on the owners and occupiers of property within the borough. They were also authorised to contract with owners or occupiers of property in the extra-municipal districts for the supply of water for domestic use, and to charge a rate or rent for such supply to be called a "contract water rate." By the Dublin Waterworks Act, 1870, it was provided that the income derived from the extra-municipal districts should form, with the city rates, a consolidated fund, available for the payment of principal and interest of loans, and applicable to all purposes of the Act:—*Held*, that the excess of receipts over expenditure in respect of extra-municipal districts was liable to income tax (*Lord Mayor, etc. of Dublin* v. *M'Adam* (1887), 20 L. R. Ir. 497). By a local Act the duty was imposed upon a municipal corporation of lighting a town with gas, and the Act further provided that it should be lawful for the corporation, after lighting the town, to supply private customers with gas. The corporation, from the supply of gas to private consumers, earned profits, on which they were assessed to income tax. They claimed to deduct from these profits the expenses incurred in lighting the town, as being money wholly and exclusively laid out or expended for the purposes of a trade, within the meaning of 5 & 6 Vict. c. 35, s. 100, Sched. D., r. 1, of the rules applying to the first and second cases:—*Held*, that the lighting of the town and the supply of gas to private customers were separate and distinct operations; that no trade was carried on until the respondents, after having lighted the town, began to supply gas to private customers, and therefore the expenses incurred in lighting the town were not money laid out or expended for the purposes of a trade, and the deductions could not be allowed (*Dillon* v. *Corporation of Haverfordwest*, [1891] 1 Q. B. 575).

Rating of gasworks.

In the rating of gasworks the method of valuation is to find what a hypothetical tenant carrying on the same business would give as the rent of the concern, and not to assess on the profits (*Rex* v. *Birmingham Gas Co.* (1823), 1 B. & C. 506). See, however, as to the taking of profits into account, the *Sheffield Case*, *infra*. In respect of land occupied by their pipes, gas companies are rateable to the extent of the increased value of the land in consequence of the pipes being used for the purpose of conveying the gas (*Rex* v. *Brighton Gas Co.* (1826), 5 B. & C. 466; *R.* v. *Cambridge Gaslight Co.* (1838), 8 A. & E. 73; *Rex* v. *Birmingham and Staffordshire Gaslight Co.* (1837), 6 A. & E. 634).

Sheffield Case, 1863.

The property of a gas company lay in five townships (of which the respondent township was one), and consisted of—(1) lands and buildings, with retorts and furnaces and pipes attached thereto, used for the making of gas; (2) of buildings used as storehouses; (3) of buildings used as offices; and (4) of land occupied by mains and pipes for conveying the gas to the company's customers. Of these different kinds of property, the first, second, and third were situated in the respondent and in one of the other townships; but the mains and pipes extended through the respondent and partly into each of the other four townships. The Court of Queen's Bench decided that the rateable value of the whole of the property of the company should be ascertained by—(1) taking from the latest published accounts of the company the sum of the annual gross receipts for sale of gas, and of the residuary products, and for the hire of gas meters and fittings, and work done; (2) by deducting from this amount the gross expenditure, thus leaving the net receipts; and (3) by deducting from such net receipts a proper sum for tenant's profits, and for interest on capital, rates and taxes, the cost of renewal, repairs, and insurance of buildings and plant, and renewal of the mains. The court also held, in accordance with *The Queen* v. *Mile End Old Town* (1847), 10 Q. B. 208, and *The Queen* v. *The West Middlesex Waterworks Co.* (1859), 1 E. & E. 716, that the stations, works, buildings, etc., ought to be valued as fixed property, deriving some additional value from their being used as part of the gasworks. *Held*, also, that the rateable value of the mains and pipes, which would be the residue, after deducting the net rateable value of the stations, works, buildings, and lands within the respondents' township from the value of the whole rateable property of the company, must be apportioned among the different townships, not simply according to the extent of the mains contained in each, but keeping in view also the fact that part of them contributed directly, and part only indirectly, to the profits, as had been held in *The Queen* v. *The West Middlesex Waterworks Co.*, *supra* (*The Queen* v. *The Sheffield United Gaslight Co.* (1863), 32 L. J. M. C. 169; *S. C.*, *sub nom. Sheffield United Gaslight Co.* v. *Sheffield Overseers* (1863), 4 B. & S. 135). Further, as to apportionment between different parishes, see *Sculcoates Union* v. *Hull Dock Co.*, [1895] A. C. 137. See further hereon, the cases cited *post*, p. 520, as to the rating of waterworks.

Lee Case, 1866.

In the *Lee Case*, the following important points were decided:—(1) On assessing gasworks to the poor rate, in ascertaining the gross estimated rental, a deduction ought to be allowed in respect of the cost of the meters, which belong to the gas company, but are put up on the premises of the consumers, and are connected with the service pipes by solder, and by means of those pipes with the company's main, as they are mere chattels; but (2) deductions

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ought not to be allowed in respect of—1. *Retorts*, which are instruments in which the coals are carbonized and the gas produced, consisting of circular pieces of clay, to which the heat is applied, and also the arches which contain them, and the pipes through which the gas passes to the purifiers, the whole being distinct and severable from the floor and not attached to it by cement or mortar, but only packed with fire-clay.—2. *Purifiers*, which are massive iron vessels standing on a brick base, but not fixed to it, connected with the pipes passing through the soil to the retorts by screw bolts, and in the same way with the pipes passing through the soil to the tanks and gasholders.—3. *Steam engines*, used for driving the machinery, fastened by screw bolts to a stone base fixed in the soil.—4. *Boilers*, set in brickwork, fixed in the soil.—5. *Gasholders*, which are hollow cylindrical vessels of plate-iron, covered at the top, but open at the bottom, and rising and falling by means of pillars and pulleys into circular tanks sunk in the soil, into which the gas passes through purifiers from the retorts.—6. *Trade fixtures*, such as pumps and exhausters, which are fixed to the freehold, but would be removable as tenant's fixtures. For all of these are things which, though capable of being removed, are yet so far attached as that it was intended that they should remain permanently connected with the freehold, viz., the gasworks, and remain permanent appendages to them, as essential for the purpose for which the works were made. And it makes no difference that, by the practice in letting gasworks, the tenant would be compelled to take to and find capital for the purchase of all the above property (*R.* v. *Inhabitants of Lee* (1866), L. R. 1 Q. B. 241).

In the above case the following was the statement relied on by the company:

Gross Receipts.			
Total rental for gas light for the year ending December, 1863			£143,68
Working Expenses.		£	
Coals, 78,563 tons at 15*s.* 3*d.*		59,888	
Materials for purification		984	
		60,872	
Less residual products, viz., coke, breeze, tar and ammoniacal liquor		33,394	
		27,478	
Wages.			
Salaries and commissions		21,537	
Office expenses and stationery		2,014	
Maintenance of works, retorts, etc., including the expenses not only of repairs, but also of reinstatement		20,576	
Meter repairs and fixing		3,100	
Lighting, cleansing and repairing public lamps		2,891	
Bad debts and overcharges		715	
Law expenses		1,000	
Directors and auditors		2,100	
Rates and taxes, 5*s.* 6*d.* in the pound on an assessment of £15,429		4,244	
			85,655
Net receipts			58,034
Occupiers' Share.	£		
Working capital	50,000		
Present value of meters	35,000		
**Present value of retorts ... ...*	*18,000*		
**Present value of fixtures and utensils ... ...*	*97,000*		
	£200,000		
		£	

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* These two items disallowed by the court.

Occupiers' Share.	£	
Interest 5 per cent. thereon	10,000	
Trade profits, 10 per cent. thereon	20,000	
Risk and casualties, 2½ per cent. thereon	5,000	
		35,000
Gross estimated rental		23,034
Statutable Deductions.		
	£	
Probable average annual costs of renewals and insurance of buildings and apparatus	2,655	
Annual sinking fund, for renewal of trade fixtures and utensils	3,000	
Annual sinking fund for reproduction of mains and pipes	1,950	
		7,605
Rateable value of the whole works		£15,429

	£
Rateable value of the whole works	15,429
Estimated rateable value of stations (not including the meters, retorts, fixtures and utensils, in respect of which above deductions are made)	8,628
Rateable value of mains and pipes	£6,801

As	£143,689	:	£6,801	:	£5,144	:	£243
	Gross Receipts.		Rateable Value of the mains.		Receipts in Lee.		Rateable value of the mains in Lee.

It will be seen by the decision in this case that £18,000 for retorts and £97,000 for fixtures and utensils were not allowed; but the rate of deduction for interest, trade profits and risks, namely, 17½ per cent., was considered fair. The foregoing statement—subject to the alterations made on it consequent on the judgment of the court—remains a guide in estimating rateable value in similar cases. Since the date of the decision (1866) it has been improved upon in some respects. See the valuations employed by the various expert witnesses in the following cases:—*South Metropolitan Gas Co.* v. *St. Olave's Union*, Ryde's Rating Appeals, 1871—1885, p. 305; Jl. of G. L., vol. 37, p. 369; *Gaslight and Coke Co.* v. *City of London Union*, Ryde's Rating Appeals, 1891—1893, p. 204; and Jl. of G. L., vol. 58, pp. 214, 260, 355, 403, 717, 761, 807, 853, 903, 1051; vol. 59, pp. 117, 299, 345, 397, 541, 584; and vol. 61, p. 599. In the course of the latter case the following questions were discussed, but in the judgment they are not separately dealt with:

"(1.) What is the proper rate of interest on tenant's capital?

"(2.) Whether repairs to the rateable hereditament can be regarded as a charge falling on the hypothetical tenant?

"(3.) Whether directors' fees, or the expenses of promoting or opposing bills in Parliament, can be so regarded?

"(4.) Whether superannuation allowances paid to officers retired in consequence of the amalgamation of several companies can be treated as part of the working expenses?

"(5.) On what principle are directly and indirectly productive mains to be distinguished?

"(6.) Whether an unexpected increase in expenditure causing a diminution of profits made up by drawing upon a reserve fund can be regarded as chargeable against the fund represented by the allowance of 2½ per cent. interest on tenant's capital for 'risks and casualties'?" (Ryde's Rating Appeals, 1891—1893, p. 204).

The directly productive mains of a gas company had been assessed in the valuation lists of various parishes at rateable values approximating to

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9½ per cent. of the gross receipts. The court dismissed the appeals against the lists. In arriving at their decision, the court did not consider the results of any particular year, and declined to lay down any principle as to what year's accounts should be considered. The appellants claimed an allowance of 17½ per cent. on the tenant's capital. The court declined to recognise that there was any rule as to what percentage should be allowed, and did not state what percentage they allowed in this particular case (*South Metropolitan Gas Co.* v. *Woolwich Union Assessment Committee* (1907), 1 Konst. Rating Appeals, 48, London Quarter Sessions).

A gas company supplied to some of the consumers of their gas, prepayment meters (otherwise called "penny-in-the-slot" meters), that is, meters with a box attached into which a penny can be dropped so as to allow a measured quantity of gas to pass through the meters. They also supplied pipes, burners, and other fittings for use with the prepayment meters. The hire of the prepayment meter and fittings was paid for by the consumer by means of an increased price per 1,000 cubic feet of gas consumed. The company also supplied to some of the consumers cooking stoves, some of the stoves being used in connection with ordinary meters, and some in connection with prepayment meters. The hire of the stove was paid for separately by the consumer. In rating the gas company's undertaking upon a basis of the company's gross receipts (which included the sums paid for hire of the prepayment meters, stoves, and fittings), the Recorder held that these articles should be treated as being provided by the hypothetical tenant of the undertaking. He therefore took the value of these articles into account as part of the tenant's capital:—*Held* (assuming the question to be one of law), that the decision of the Recorder was right (*Ipswich Gaslight Co.* v. *Ipswich Union* (1907), 2 Konst. Rating Appeals, 699, K. B. D.).

The owner of a block of artizans' dwellings, consisting of separate tenements, the access to which was by means of a common stair, let the tenements upon the terms of the tenants paying a certain weekly sum by way of rent, and also a further sum for the lighting and cleaning of the common stair:—*Held*, that for the purpose of arriving at the gross value of the tenements under the Valuation (Metropolis) Act, 1869, the sum paid for lighting and cleaning the stair must be added to the rent reserved (*Pullen* v. *St. Saviour's Union*, [1900] 1 Q. B. 138).

The local board of Birkdale had the exclusive right of laying down gas mains and pipes within that township, and were obliged to keep all present and future gas mains and public lamps in good repair, and were to afford the Corporation of Southport (who were the owners and occupiers of gasworks, and were empowered by statute to supply gas in the township of Birkdale) the use of the same mains for the supply of gas for public and private purposes within that township, in consideration of certain payments to be made by the corporation to the local board for every thousand cubic feet of gas supplied to private consumers. The local board had laid mains within the township, and had kept them in repair, and had afforded the corporation the use of the same for the supply of gas. The mains were not used for any purpose other than the supply of gas by the corporation. The corporation laid the service pipes from the mains to the premises of private consumers at the cost of the latter, kept the service pipes in repair, and charged and collected all gas rents:—*Held* (affirming the decision of the Queen's Bench Division, [1893] 2 Q. B. 468), that the corporation had only a right to the use of the mains for the sole purpose of the supply of gas, and had no exclusive occupation of the mains so as to render them liable to be rated in respect of them (*Mayor, etc. of Southport* v. *Ormskirk Union Assessment Committee*, [1894] 1 Q. B. 196).

For an example of the method of valuing a gas undertaking, see *Malton Gas Co.* v. *Malton Union* (1911), 75 J. P. 79.

For a rating case turning on the construction of certain Colonial Acts, see *Melbourne and Metropolitan Board of Works* v. *Metropolitan Gas Co.*, [1905] A. C. 595.

As to assessment of gasworks in Scotland, see *Dundee Gas Commissioners* (1881), 9 Rettie, 1240; *Assessor for Falkirk* v. *Falkirk Gas Co., Ltd.* (1883), 10 Rettie, 651; *Magistrates of Glasgow* v. *Hay* (1884), 12 Rettie, 3, and the

Lands Valuation (Scotland) Amendment Act, 1895 (58 & 59 Vict. c. 41); and *Kirkcaldy Gaslight Co., Ltd.* v. *Assessor for Kirkcaldy* (1905), 42 S. L. R. 510.

The subject of the rateability of gas and water works is further treated, *post*, in the notes to s. 75 of the Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17).

Arrears of dividend.

The sum required to make up the deficiency for antecedent years may be taken from the profits of any year; see *Matthews* v. *G. N. Rail. Co.* (1859), 28 L. J. Ch. 375.

For some recent instances of clauses inserted in Gas Acts limiting the period for which back dividends may be paid, see Gorleston and Southtown Gas Act, 1903 (3 Edw. 7, c. xxxviii.), s. 14 (no deficiency to be made up "previous to December 31st, 1892"); British Gaslight Company, Limited (Norwich) Act, 1903 (3 Edw. 7, c. xcvii.), s. 5 (no deficiency to be made up "after the expiration of five years from the year in which the deficiency occurred").

Where there are different capitals with the same or different rates of dividend, and there are several years of deficiency of dividends to be made up, it will be better to commence paying off such deficiencies of dividend as have accrued in the immediately preceding years. As the whole capital has earned the profit above what is necessary to pay the statutory dividend, so the whole capital should receive the benefit of being paid back dividends. In this way the previous deficiency of the smaller capital will be at last reached and made good to the holders of the shares representing the then capital.

By their special Act a gas company established before 1847 was authorised to pay dividends limited to 10 per cent. in any one year, and when the sum was reached, if there was a surplus, the price of gas was to be reduced; there was also a provision for a reserve or contingent fund, to be limited to £5,000; afterwards the dividends and interest thereon were to be no longer invested, but applied to any of the general purposes of the undertaking to which the profits of the company were applicable. By another section of the Act it was enacted, that if in any year after the passing of the Act the profit should not amount to 10 per cent. per annum on the amount paid on the shares (whether such deficiency should have occurred before or subsequently to the formation of the contingent fund), such a sum might be taken from the contingent fund as, with the actual divisible profits of such year, would enable the company to make a dividend of 10 per cent. per annum. The dividends paid ranged from 5 to 9 per cent. up to July, 1862, but since then 10 per cent. had been paid, and £3,992 had been accumulated out of the surplus profits. The company sought to apply this sum of £3,992 to the payment of back dividends of past years:—*Held*, by Sir GEORGE JESSEL, M.R., that as long as the company paid 10 per cent. they could not touch the contingent fund, and that they were not entitled in any one year to divide more than 10 per cent., whether from profits or contingent fund, and were not entitled to apply the fund in making up the dividends of past years to 10 per cent. (*Chamberlain* v. *The New Worcester Gaslight Co.*, Jl. of G. L., June 8th, 1875; Times, June 5th, 1875).

The West Kent Water Company was incorporated in 1809. By later Acts of 1811, 1850 and 1862 further capital and additional powers were conferred but none of these incorporated the Waterworks Clauses Act, 1847, or imposed any limitation in regard to dividend. In 1860 another water company was incorporated by special Act, which incorporated the Waterworks Clauses Act, 1847. In 1864, the original company obtained an Act authorising amalgamation with the other company, and this Act incorporated the Waterworks Clauses Act, 1847. Of late years the company had been sufficiently prosperous to be able to make up all deficiencies on previous dividends back to the year 1864, and it now proposed to continue making up to its ordinary shareholders a dividend of 10 per cent. on their stock from the year 1809 down to June 30th, 1864. The capital of the second company being small, it was agreed at the trial not to deal with that matter as a separate issue. Upon the broad question of whether the West Kent Company were entitled to pay

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back dividends as proposed anterior to 1864 the House of Lords, affirming the decision of the Court of Appeal, held that they were not so entitled (*Kent Waterworks Co.* v. *Lamplough*, [1904] A. C. 27). As to the claim of the Chelsea Waterworks Company to back dividends, made before the Tribunal of Arbitration in connection with the purchase of the Metropolitan Water Companies, see *Chelsea Waterworks Co.* v. *The Metropolitan Water Board*, [1904] 2 K. B. 77, cited *post*, p. 519.

If profits exceed the amount limited, excess to be invested and form a reserved fund.

31. If the clear profits of the undertaking in any year amount to a larger sum than is sufficient, after making up the deficiency in the dividends of any previous year as aforesaid, to make a dividend at the prescribed rate, the excess beyond the sum necessary for such purpose shall from time to time be invested in government or other securities, and the dividends and interest arising from such securities shall also be invested in the same or like securities, in order that the same may accumulate at compound interest until the fund so formed amounts to the prescribed sum, or if no sum be prescribed a sum equal to one-tenth of the nominal capital of the undertakers, which sum shall form a reserved fund to answer any deficiency which may at any time happen in the amount of divisible profits, or to meet any extraordinary claim or demand which may at any time arise against the undertakers; and if such fund be at any time reduced, it may thereafter be again restored to the said sum, and so from time to time as often as such reduction shall happen.

Insurance fund.

Reserve fund.

In more recent gas legislation, where the sliding scale was introduced, the objects of this section were generally secured by two distinct sections, the one providing for the formation of an insurance fund to meet extraordinary claims, and the other providing for the formation of a reserve fund applicable to the making up of the dividend to the authorised rate, but these sections have now been superseded See the Introduction at pp. 10, 11.

Reserved fund not to be resorted to, unless to meet an extraordinary claim.

32. Provided always, that no sum of money shall be taken from the said fund for the purpose of meeting any extraordinary claim, unless it be first certified in England or Ireland by two justices, and in Scotland by the sheriff, that the sum so proposed to be taken is required for the purpose of meeting an extraordinary claim within the meaning of this or the special Act.

As to the reserve fund in undertakings coming under the new legislation and adopting the sliding scale, see the Introduction at p. 11.

Money taken from the "reserved fund," under s. 34, *infra*, for the purpose of making up deficiency in the amount of dividend, is not an extraordinary claim or demand, and therefore does not require to be certified by two justices or the sheriff.

When fund amounts to prescribed sum, interest to be applied to undertaking.

33. When such fund shall, by accumulation or otherwise, amount to the prescribed sum, or one-tenth of the nominal capital of the company, as the case may be, the interest and dividends thereon shall no longer be invested, but shall be applied to any of the general purposes of the undertaking to which the profits thereof are applicable.

If profits are less than the prescribed rate, the re-

34. If in any year the profits of the undertaking divisible amongst the undertakers shall not amount to the prescribed rate, such a sum may be taken from the reserved fund as, with the actual divisible profits of such year, will enable the undertakers to make a dividend of the amount aforesaid, and so from time to time as often as the occasion shall require.

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served fund to supply deficiency.

See the Introduction at p. 11.

35. In England or Ireland the court of quarter sessions, and in Scotland the sheriff, may, on the petition of any two gas ratepayers within the limits of the special Act, nominate and appoint some accountant or other competent person, not being a proprietor of any gasworks, to examine and ascertain, at the expense of the undertakers (the amount of such expense to be determined by the said court or sheriff), the actual state and condition of the concerns of the undertakers, and to make report thereof to the said court at the then present or some following sessions, or to the sheriff; and the said court or sheriff may examine any witnesses upon oath touching the truth of the said accounts and the matters therein referred to; and if it thereupon appear to the said court or sheriff that the profits of the undertakers for the preceding year have exceeded the prescribed rate, the undertakers shall, in case the whole of the said reserved fund has been and then remains invested as aforesaid, and in case dividends to the amount hereinbefore limited have been paid, make such a rateable reduction in the rate for gas to be furnished by them as in the judgment of the said court or sheriff shall be proper, but so as such rates, when reduced, shall ensure to the undertakers (regard being had to the amount of profit before received) a profit as near as may be to the prescribed rate.

If profits are more than the amount prescribed, a rateable reduction to be made in the price of gas.

Where the sliding scale is sanctioned, and the modern enactments as to insurance fund and reserve fund and the enactments by which these have in turn been superseded have been introduced, the above section is superseded (see the Introduction at p. 10). Certain consumers of gas brought an action against the Ashton Gas Company, alleging that the company had created a reserved fund greatly in excess of that authorised by its special Acts, and had carried over from year to year large undivided profits, thereby avoiding the obligation upon the company to reduce the price of the gas:—*Held* (Lord ESHER, M.R., *dissentiente*), that no such duty as alleged was imposed by the Acts on the company; that the consumers had no control over the affairs of the company, and were not, therefore, entitled to raise the question, the shareholders alone being interested, and that the court could not order the reserve fund and undivided profits to be applied in reduction of the price of the gas in the manner suggested (*Mason* v. *Ashton Gas Co.* (1886), 54 L. T. 708). The case had been tried before MATHEW, J., who granted a *mandamus* directing the defendants to reduce the price of their gas so as to exhaust the excess in their reserved fund. This judgment was reversed in the Court of Appeal. The Ashton Gas Act, 1877, had introduced the sliding scale, and authorised the formation of an insurance fund and a reserve fund in the terms at that time usual upon adoption of the sliding scale. In delivering the judgment of LINDLEY, L.J., and himself, LOPES, L.J., remarked: "The plaintiffs, as gas consumers, have no interest whatever in the assets of the company, except this, that if the company were to raise the price of gas and not diminish their dividends, as required by s. 17, the gas consumers might obtain an injunction to restrain the company for so doing. But no such case as this was raised before us; and in the view we take of the absence of all right on the part of the plaintiffs to have the price of gas fixed or regulated by the court, it follows that, in our opinion, the plaintiffs are not entitled to raise any question as to whether the gas insurance and reserve funds are, or are not, larger than the Act authorises. Those are matters

Insurance fund; reserve fund; special purposes fund.

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with which the plaintiffs have no concern. The only persons competent to raise such questions are the shareholders or the Attorney-General. It was suggested that the accumulated profit having arisen from overcharging the gas consumers, it belonged to them. Even if the accumulated fund had so arisen, it would not be right to order the fund to be applied in reducing the price of gas, for that would be in effect to distribute the fund, not amongst those who had been overcharged, and from whom the fund had been obtained, but amongst future consumers of gas—a different class of persons."

The court of quarter sessions has no jurisdiction, under s. 35 of the Gasworks Clauses Act, 1847, to appoint a gas engineer to assist an accountant appointed thereunder to examine and ascertain the actual state and condition of the concerns of the gas company, and where such order is made a writ of *certiorari* will lie to bring the order up to be quashed (*R.* v. *Brindley* (1886), 54 L. T. 435).

A petition was, under the above section, presented to the Recorder of Hanley praying him to appoint a person to inquire into the actual condition of the undertaking of the prosecutors, and an accountant was appointed. During the inquiry he examined not only the accounts of the then previous year, but re-opened all the accounts of previous years to 1871, and a report based upon this inquiry was sent in by him to the recorder. It was admitted that the whole of the reserved fund was not then and never had been invested, and that the prescribed maximum dividend had not been paid. The recorder being of opinion that the accounts when amended showed that the company had in point of fact earned enough to pay the prescribed maximum dividend, and to have invested and kept invested the whole of the reserve fund, made an order reducing the price of gas 6*d.* per 1,000 cubic feet. He further ordered the prosecutors to pay £650, the expense of the proceedings before the accountant, and to pay to the petitioners £2,433 6*s.* 6*d.*, "their costs of and incident to the petition." Upon an application for a writ of *certiorari* to quash the order as having been made without jurisdiction:—*Held*, that the order to reduce the price of gas was bad, the power of the recorder being absolutely restricted by s. 35 to cases where the whole of the reserved fund has been invested and the prescribed dividend paid; and that the recorder acted without jurisdiction in ordering the costs of the petitioners to be paid by the prosecutors. *Per curiam:* The accountant and the recorder had jurisdiction to inquire into the accounts of past years for the purpose of ascertaining the actual condition of the concern; but *semble* that they had no power to disallow and re-cast them, and by so doing vary the accounts of the year into which they were inquiring (*R.* v. *The Recorder of Hanley* (1887), 19 Q. B. D. 481).

For some other instances in which proceedings have been taken before justices or recorders under s. 35, see the following cases reported in the Journal of Gas Lighting:—*Winchester Water and Gas Co.*, 1881, vol. 38, pp. 755, 837 (also reported 45 J. P. 472, 851); *Stretford Gas Co.*, 1882, vol. 39, p. 1073; *Leamington Gas Co.*, 1886-7, vol. 48, pp. 25, 750; vol. 49, pp. 73, 680; *Rastrick Gas Co.*, 1888, vol. 52, p. 723; *Liverpool United Gaslight Co.*, 1895, vol. 66, p. 925; *Ossett Gas Co.*, 1899, vol. 73, p. 923, and vol. 74, p. 61; *Devonport Gas Co.*, 1901, vol. 77, p. 148 and p. 1004.

For an instance where instead of two "gas ratepayers" a local authority has been authorised by a special gas Act to put the above section into operation, see the Scarborough Gas Act, 1895, s. 19.

Court may order petitioner to pay costs of groundless petition.

36. Provided always, that if, in the case of any petition so presented, it appear to the said court or sheriff that there was no sufficient ground for presenting the same, the said court or sheriff may, if they or he think fit, order the petitioner to pay the whole or any part of the costs of or incident to such petition (the amount thereof to be determined by the said court or sheriff), and the costs so ordered to be paid shall be recoverable in the same way as damages are recoverable under this or the special Act.

Penalty on undertakers for refusing to produce books, vouchers, etc.

37. If the undertakers shall, for seven days after being required to produce to the said court or sheriff, or to the said accountant or other person as aforesaid, any books of account or other books, bills, receipts, vouchers, or papers relating to the pecuniary affairs of the undertakers, refuse or neglect to produce such books, bills, receipts, vouchers, or papers, they shall forfeit the sum of one hundred pounds for every such refusal or wilful neglect, and the further sum of ten pounds for every day such refusal or wilful neglect shall continue after the expiration of the said seven days; such respective penalties to be recovered by any person who will sue for the same, with full costs of suit, in any of the superior courts.

Annual account to be made up by undertakers, and sent to the clerk of the peace in England or Ireland, or to the sheriff clerk in Scotland, and to be open to inspection.

38. And with respect to the yearly receipt and expenditure of the undertakers, be it enacted, that the undertakers shall, in each year after they have begun to supply gas under the provisions of this or the special Act, cause an account in abstract to be prepared of the total receipts and expenditure of all rents or funds levied under the powers of this or the special Act for the year preceding, under the several distinct heads of receipt and expenditure, with a statement of the balance of such account, duly audited and certified by the chairman of the undertakers, and also by the auditors thereof, if any; and a copy of such annual account, if the gasworks be situated in England or Ireland, shall be transmitted, free of charge, to the clerk of the peace for the county in which the gasworks are situate, and if the gasworks be situated in Scotland, such copy shall be transmitted, free of charge as aforesaid, to the sheriff clerk of such county, and such transmission shall be made on or before the thirty-first day of January in each year, under a penalty of twenty pounds for each default; and the copy of such account so sent to the said clerk of the peace or sheriff clerk shall be kept by him, and shall be open to inspection by all persons at all seasonable hours, on payment of one shilling for each inspection.

See notes to s. 35 of the Act of 1871, *post*, p. 240, which prescribes forms of account, and requires a copy to be sent to the local authority. These forms as well as a working statement will be found, *post*, at pp. 250—257. And see ss. 101 *et. seq* of the Companies Clauses Consolidation Act, 1845, as to auditors.

See also *Leamington Priors Gas Co.* v. *Davis*, cited in the note under s. 35 of the Act of 1871.

39. [*Tender of Amends.*]

This section has been repealed by the Statute Law Revision Act, 1894, possibly on the assumption that the protection of the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), applies to all gas undertakers, whether local authorities or gas companies. The decided cases under the Act of 1893 show, however, that the Act does not protect trading companies. The Act and the cases will be found at p. 1062, *post*. The corresponding section (141) as to tender of amends in the Companies Clauses Consolidation Act, 1845, has also been repealed by the Statute Law Revision Act, 1894, but s. 135 of the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), remains unrepealed.

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Recovery of damages and penalties.

And with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices or to the sheriff, be it enacted as follows:

The Railways Clauses Consolidation Act, 1845, as to damages, etc., to be incorporated with this and the special Act.

40. If the gasworks be in England or Ireland, the clauses of the Railways Clauses Consolidation Act, 1845, with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, shall be incorporated with this and the special Act; and if the gasworks be in Scotland, the clauses of the Railways Clauses Consolidation Act (Scotland), 1845, with respect to the recovery of damages not specially provided for, and to the determination of any other matter referred to the sheriff or to justices, shall be incorporated with this and the special Act, and such clauses shall apply to the gasworks and to the undertakers respectively, and shall be construed as if the word "undertakers" had been inserted therein instead of the word "company."

Railways Clauses Act, 1845.

The following are the sections of the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), applicable to recovery of damages and penalties:

> Section 140. In all cases where any damages, costs, or expenses are by this or the special Act, or any Act incorporated therewith, directed to be paid, and the method of ascertaining the amount or enforcing the payment thereof is not provided for, such amount, in case of dispute, shall be ascertained and determined by two justices; and if the amount so ascertained be not paid by the company or other party liable to pay the same within seven days after demand the amount may be recovered by distress of the goods of the company or other party liable as aforesaid; and the justices by whom the same shall have been ordered to be paid, or either of them, or any other justice on application, shall issue their or his warrant accordingly.
>
> Section 141. Enacts that, if sufficient goods of the company cannot be found, distress may, in cases not exceeding £20, issue against goods of treasurer after notice, who may sue the company for recovery of same.
>
> Section 142. Gives justices power to issue summons and to determine the question raised in the summons and award costs.
>
> Section 143. The company are to publish short particulars of any offences for which penalty is imposed, and affix the same on a board in some conspicuous place—and renew the same when obliterated.
>
> Section 144. Provides a penalty on anyone defacing boards used for such publication.
>
> Section 145. Every penalty or forfeiture imposed by this or the special Act, or by any byelaw made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices.
>
> Section 146. *Provides that penalties and costs may be levied by distress.*
>
> Section 147. *Empowers justices to detain offenders until return is made to warrant of distress, and if no sufficient distress, offenders may be committed to gaol for any period not exceeding three months.*
>
> Section 148. Directs distress to be levied by sale of goods of party, and the overplus, if any, to be repaid.
>
> Section 149. Provides that the distress is not to be unlawful for want of form.

Section 150. Allows justices to award one half of penalty to informer and remainder to overseers. [*Cf.* s. 43 of the Waterworks Clauses Act, 1847, and s. 36 of the Gasworks Clauses Act, 1871.]

Section 151. *All penalties must be sued for within six months after commission of offence.*

Section 152. If there be any damage, this is to be made good in addition to the penalty.

Section 153. *Authorises justices to summon witnesses, who are to be liable to a penalty of £5 for non-appearance or refusing to be examined.*

Section 154. Authorises officers of company to detain persons who have committed any offence, if their name and residence be unknown.

Section 155. *Gives the form of conviction.*

Section 156. Directs that proceedings are not to be vacated for want of form.

Section 157. Provides an appeal to quarter sessions.

Section 158. Enables quarter sessions to hear and determine the appeal, and to adjudge costs.

Section 159. Penalties accruing in the metropolitan district to be paid to receiver of metropolitan police district, in accordance with provisions of the Act for regulating the police courts of the metropolis (2 & 3 Vict. c. 71).

Section 160. Provides that persons giving false evidence shall be liable to the penalties of wilful and corrupt perjury.

By the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), those of the foregoing sections which are in italics are repealed (as also are parts of ss. 145 and 157) with regard to England, and the provisions of the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), amended by the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), are substituted. Proceedings for the recovery of penalties will in future be regulated by the Summary Jurisdiction Acts. Section 5 of the Act of 1884 provides that "Where by virtue of the repeal enacted by this Act or otherwise any statute authorising the infliction by any justice or justices of a penalty or fine, either as a sole punishment or as an alternative punishment for imprisonment, provides no method for the recovery of such penalty or fine, sections nineteen and twenty-one of the Summary Jurisdiction Act, 1848, as amended by section twenty-one of the Summary Jurisdiction Act, 1879, shall apply to the recovery of such penalty or fine." "Damages, costs and expenses" will continue to be recoverable as hitherto under the provisions of s. 140 of the Railways Clauses Consolidation Act, 1845.

By the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 33, any metropolitan police magistrate, and any stipendiary magistrate appointed for any town, liberty, borough, or place, and sitting at a police court or other place appointed in that behalf, shall have full power to do alone whatever is authorised to be done by one or more justice or justices of the peace. See also 21 & 22 Vict. c. 73, s. 1, and especially s. 42, *infra.*

In Scotland the proceeding is under the corresponding sections of the Railways Clauses (Scotland) Act, 1845. The remedy is poinding instead of distress, and the tribunal is the sheriff substitute instead of justices. Various sections and parts of sections of the Railways Clauses (Scotland) Act have been repealed by the Statute Law Revision Act, 1892. The Summary Jurisdiction (Scotland) Act, 1908, now governs the procedure in Scotland for recovery of penalties.

The section in the text is identical with s. 85 of the Waterworks Clauses Act, 1847, *post.* Under that Act it has been decided that the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 11 (which limits the time for making a complaint to six months from the time when the matter of

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such complaint arose) applies to the hearing of a summons before justices for arrears of water rate under s. 85 of the Waterworks Clauses Act, 1847, and s. 140 of the Railways Clauses Act, 1845 (*East London Waterworks Co.* v. *Charles*, [1894] 2 Q. B. 730).

In the above case of *East London Waterworks Co.* v. *Charles*, no question was raised as to whether it was necessary to demand payment in writing before it could be said that a matter of complaint arose within the meaning of s. 11 of the Summary Jurisdiction Act, 1848. Notice in writing had in fact been given in that case, and more than six months expired since the giving of the notice. In a case decided a few months later, the question was raised as to whether previous notice in writing was necessary, a summons having been taken out under s. 74 of the Waterworks Clauses Act, 1847, to recover water rates due. The magistrate decided that no demand having been made, there could be no neglect to pay within the meaning of s. 74. A Divisional Court on a case stated, held that, as under s. 70 the water rates were payable in advance, no previous demand was necessary, and therefore that a demand was not a condition precedent to the right to proceed summarily (*East London Waterworks Co.* v. *Kyffin*, [1895] 1 Q. B. 55). This decision must be taken in connection with the following words of MATHEW, J., in giving judgment: "It is said that he had no means of knowing this amount, and that he was therefore justified in not paying until he did know it. I cannot think why a formal demand should be necessary in order to tell the owner the exact amount that is due. As I have already said that is a thing which he would be likely to know, and it is not stated in the case that he did not know it." This question as to whether previous demand is or is not a condition precedent to the jurisdiction of justices, again arose incidentally in *Elliott* v. *Russell*, [1902] 2 K. B. 748, but it was not necessary for the purposes of that case that the court should decide the point. Lord ALVERSTONE, C.J., in the course of his judgment remarked, "I do not think that the decision in *East London Waterworks Co.* v. *Kyffin* is in conflict with our decision in this case, nor do I think that the court intended to lay down any such general principle as was contended for, namely, that under no circumstances was any demand necessary. I do not understand the decision to go that length; and if it did go that length, I should doubt whether sufficient consideration was given to the matter. MATHEW, J., in that case pointed out that the dispute between the parties had been known for some time, and the whole question was whether a formal notice was necessary before the man could be summoned; but I do not understand MATHEW, J., as laying down the proposition that under no circumstances is any demand necessary before the time begins to run. I think that the case was used in argument here for supporting propositions larger than the decision justifies." This case is more fully referred to *post*, p. 511. In a case which arose under the Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), it appeared that s. 73 of that Act authorised the commissioners under that Act, in certain cases, to take down, etc., dangerous structures, and to recover the expense incurred from the owner in a summary manner as directed by the 11 & 12 Vict. c. 43. Demand was made in writing for payment, and afterwards a summons was issued. The question arose as to the period from which the six months limited by s. 11 of the last-mentioned Act was to run. For this purpose it was necessary to decide whether the demand in writing was necessary or not:—*Held*, that the demand in writing was necessary, and that the six months ran from the demand and refusal, and not from the incurring of the expense. Lord CAMPBELL, C.J., observed, "It is true that a demand is not expressly required; but I think that till then the liability does not accrue" (*Labalmondiere* v. *Addison* (1858), 1 E. & E. 41).

Sect. 73 of the Town Police Clauses Act, 1847, is identical with s. 40 of the Gasworks Clauses Act, 1847, and it has been held that a determination of justices under s. 33 of the Town Police Clauses Act, 1847, of the amount of the expenses incurred by a local authority in sending a fire brigade to a fire outside their district is not "an order for payment or otherwise" within the meaning of s. 8 of the Summary Jurisdiction Act, 1848; and that, therefore,

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a complaint with reference to such determination under s. 33 need not be made within six months of the fire, as s. 11 of the Summary Jurisdiction Act, 1848, does not apply to such a complaint (*R.* v. *Part* (1906), 70 J. P. 398).

Sect. 145 of the Railways Clauses Consolidation Act, 1845, applies only to penalties or forfeitures, "the recovery of which is not otherwise provided for." A water Act provided for compensation water being supplied to certain streams, and enacted that "the corporation shall for every day on which such neglect occurs forfeit and pay to the occupiers of each of the mills and works affected thereby (who may sue for and recover the same) the sum of £5. . . ." Certain millowners having brought actions to recover £5 for each day of default in sending down compensation water, the point was raised whether the remedy of the plaintiff ought not to be under s. 145 of the Railways Clauses Act. The court decided that the special Act had otherwise provided by the use of the words "who may sue for and recover the same" (*Meltham Spinning Co., Ltd.* v. *Huddersfield Corporation; Bent Ley Silk Mills Co.* v. *Same* (1903), 89 L. T. 403).

A corporation cannot sue for penalties as a common informer, unless expressly empowered by statute so to do (*St. Leonard's, Shoreditch* (*Guardians of*) v. *Franklin* (1878), 3 C. P. D. 377). *Cf. R.* v. *Londonderry, JJ.*, [1903] 2 Ir. 747.

In Ireland part of penalties to be paid to guardians of unions.

41. [*Repealed by the Statute Law Revision Act,* 1875 (38 & 39 Vict. c. 66).]

All things required to be done by two justices in England and Ireland may in certain cases, be done by one, and in Scotland by the sheriff, etc.

42. All things herein or in the special Act, or any Act incorporated therewith, authorised or required to be done by two justices, may and shall be done in England and Ireland by any one magistrate having by law authority to act alone for any purpose with the powers of two or more justices, and in Scotland by the sheriff . . . of any county . . . or his substitute.

Certain words omitted repealed by Statute Law Revision Acts, 1891 and 1894 (54 & 55 Vict. c. 67, and 57 & 58 Vict. c. 56).

See 11 & 12 Vict. c. 43, s. 33, cited in notes to s. 40, and 21 & 22 Vict. c. 73, s. 1.

Penalties, etc. imposed in respect of offences committed within the metropolitan police district to be paid to the receiver, and applied under 2 & 3 Vict. c. 71.

43. Every penalty or forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any byelaw in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied, in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied, by an Act passed in the third year of the reign of her present Majesty, intituled "An Act for regulating the police courts in the metropolis"; and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal, and upon the same terms, as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have

Sect. 43. been examined; and such witnesses shall be entitled to the same allowance of expenses, as they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned Act.

See s. 47 of the Act here mentioned, which may now be cited as the Metropolitan Police Courts Act, 1839 (Short Titles Act, 1896 (59 & 60 Vict. c. 14)).

Persons giving false evidence liable to penalties of perjury.

44. Every person who, upon any examination upon oath under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

Access to special Act.

And with respect to access to the special Act, be it enacted as follows:

Copies of special Act to be kept by undertakers in their office, and deposited with the clerks of the peace, etc., and be open to inspection.

45. The undertakers shall at all times after the expiration of six months after the passing of the special Act keep in their principal office of business a copy of the special Act, printed by the printers to her Majesty, or some of them, and shall also within the space of such six months deposit in the office of the clerk of the peace in England or Ireland, and of the sheriff clerk in Scotland, of the county in which the undertaking is situated, a copy of such special Act, so printed as aforesaid; and the said clerk of the peace and sheriff clerk shall receive, and they and the undertakers respectively shall keep, the said copies of the special Act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an Act passed in the first year of the reign of her present Majesty, intituled "An Act to compel clerks of the peace for counties, and other persons, to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either House of Parliament."

7 Will. 4 & 1 Vict. c. 83.

This Act of 7 Will. 4 & 1 Vict. c. 83, may now be cited as "The Parliamentary Documents Deposit Act, 1837" (Short Titles Act, 1896). See its provisions, *post.*

Penalty on undertakers failing to keep or deposit such copies.

46. If the undertakers fail to keep or deposit, as hereinbefore mentioned, any of the said copies of the special Act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

Undertakers not exempt from the provisions of 57 Geo. 3, c. cxxix. or from the laws regulating sewers.

47. And be it enacted, that nothing in this Act contained shall be deemed to exempt the undertakers from the provisions of an Act passed in the fifty-seventh year of the reign of his late Majesty King George the Third, intituled "An Act for better paving, improving, and regulating the streets of the metropolis, and removing and preventing nuisances and obstructions therein," or from the laws of sewers for the time being in force within ten miles from the Royal Exchange in the City of London.

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The Act here referred to is generally known as Michael Angelo Taylor's Act. It is a local and personal Act. It will be found in Chitty's Statutes under "Metropolis." The Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), ss. 110 *et seq.*, and the Metropolis Management Act, 1862 (25 & 26 Vict. c. 102), s. 82, contain certain provisions in regard to the breaking up and reinstatement of streets by gas and water companies. Under these Acts it has been held that a local authority is entitled to recover from a water company not only the cost of reinstating and making good the soil and pavement of any street which has been opened up for the purposes of such company, but also a reasonable charge for the supervision of the work (*New River Co.* v. *Westminster Corporation* (1904), 73 L. J. K. B. 1009).

Nothing in this or the special Act to affect the rights of the Crown.

48. Nothing in this or the special Act shall be deemed to extend to or affect any Act of Parliament relating to her Majesty's duties of customs or excise, or any other revenue of the Crown, or to extend to or affect any claim of her Majesty in right of her Crown or otherwise howsoever, or any proceedings at law or in equity, by or on behalf of her Majesty, in any part of the United Kingdom of Great Britain and Ireland.

Undertakers not exempted from provisions of any future general Act.

49. Nothing herein or in the special Act contained shall be deemed to exempt the undertakers from any general Act relating to gasworks, or any Act for improving the sanitary condition of towns and populous districts, which may be passed in the same session in which the special Act is passed, or any future session of Parliament.

See *Dudley Gasworks Co.* v. *Warmington*, cited *post*, p. 221.

50. [*Act may be amended, etc.*]

Repealed by Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

GASWORKS CLAUSES ACT, 1871.

(34 & 35 VICT. c. 41.)

An Act to amend the Gasworks Clauses Act, 1847.
[13th July, 1871.]

WHEREAS it is expedient that the provisions contained in the Gasworks Clauses Act, 1847, should be amended: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: (that is to say,)

10 & 11 Vict. c. 15, and this Act to be construed together.

1. The Gasworks Clauses Act, 1847, and this Act, shall be construed together as one Act, and the provisions of this Act shall be held to repeal and supersede such of the provisions of that Act as are inconsistent with this Act.

Short title.

2. This Act may be cited as "The Gasworks Clauses Act, 1871."

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Application of Act.

3. The provisions of this Act shall apply to every gas undertaking authorised by any special Act hereafter passed, or by any provisional order made under the authority of the Gas and Water Works Facilities Act, 1870, save where the said provisions are expressly varied or excepted by any such special Act or provisional order; and every such special Act and provisional order is in this Act included in the term "the special Act."

This provision differs from the preamble and fifth clause of the Act of 1847, which made the incorporation of that Act permissive.

By s. 2 of the Metropolis Gas Act, 1860, the Act of 1847 is incorporated with that Act, and made to apply to the several metropolitan gas companies enumerated. By s. 1 of the Act of 1871, the Act of 1847, and that Act, "shall be construed together as one Act." A question arose whether one of the enumerated metropolitan gas companies became subject to the Act of 1871 by reason of the Act of 1847 having been made by the Act of 1860 to apply to them. It was held that all the enumerated companies became subject to the Act of 1871 (*Commercial Gas Co.* v. *Scott* (1875), L. R. 10 Q. B. 400). Accordingly, where the company had improperly cut off the supply of gas from the respondent, it was held that the company were liable to the penalties provided by s. 36 of the Act of 1871, where the undertakers "neglect or refuse to supply gas to any owner or occupier of premises within the limits of the special Act entitled to the same." The words of LUSH, J., at p. 404, "I cannot therefore entertain the slightest doubt that every provision in the Act of 1871 governs all the London gas companies," must be taken with this caution, that the private Acts of these companies contain various special provisions which alter or qualify the corresponding provisions of the general Acts on particular points. The decision in *Commercial Gas Co.* v. *Scott* was given on June 8th, 1875, and the company, having then a private Bill in Parliament (which afterwards became law on August 11th, 1875) obtained the insertion therein of a provision to the effect that the Gasworks Clauses Act, 1871, shall not extend or apply to the Commercial Company. See s. 3 of the Act, *post*, p. 309.

In *South Metropolitan Gas Co.* v. *Noakes* (1889), 61 L. T. 556, the same question arose. The company is one of the companies enumerated in the Metropolis Gas Act, 1860. By s. 17 of the Act of 1860, a penalty is imposed upon a gas company if they wilfully fail for seven days after notice in writing by the consumer to furnish a supply of gas. If the Act of 1871 applied, then s. 11 provides that every owner or occupier of a house requiring a supply of gas shall serve a notice upon the undertakers specifying the premises and the day (not being an earlier day than a reasonable time after such notice) upon which such supply is to commence. It was again held that the Act of 1871 applied to the enumerated metropolitan companies, and that, s. 11 of the Act of 1871 being inconsistent with the provision as to seven days' notice in s. 17 of the Act of 1860, these companies are bound to give a supply of gas within a reasonable time after notice by the consumer, and are not entitled to seven days' notice. It seems to have been overlooked in this case that by the South Metropolitan Gas Act, 1881 (44 & 45 Vict. c. clxxii.), s. 2, it is enacted that "the . . . and the Gasworks Clauses Act, 1847, except where expressly varied by this Act, are incorporated with and form part of this Act, and the Gasworks Clauses Act, 1871, shall apply to the existing undertaking of the company as if the same were hereby authorised"; and also that by the South Metropolitan Gas Act, 1882 (45 Vict. c. xxxviii.), s. 2, it is enacted that "the . . . and the Gasworks Clauses Act, 1847, except where expressly varied by this Act, are incorporated with and form part of this Act, and the Gasworks Clauses Act, 1871, shall continue to apply to the existing undertaking of the company as modified or enlarged by this Act."

In *Gaslight and Coke Co.* v. *Hardy* (1886), 17 Q. B. D. 619, *ante*, p. 188, where it appears to have been assumed that the Act of 1871 did not apply

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to the plaintiff company, and that it only operates (*per* Fry, L.J., at p. 624) "upon gas companies which may be formed after the passing of the Act of 1871," the *Commercial* and *South Metropolitan* cases were not cited, so far as the report shows.

In *Dudley Gasworks Co.* v. *Warmington* (1881), 50 L. J. M. C. 69, it appeared that the company's special Act of 1853 incorporated the Act of 1847. After the passing of the Act of 1871, the company, not regarding it as applying to them, omitted to send accounts to the local authority, as required by s. 35, and they were held by the court, on a case stated by justices, to have been rightly convicted, because the appellants were subject to the provisions of the Act of 1871, which amended not only the Act of 1847, but also every private Act with which the Act of 1847 had been incorporated. In this case reliance was also placed on s. 49 of the Act of 1847, which enacted that nothing therein or in the special Act contained shall be deemed to exempt the undertakers from any general Act relating to gasworks . . . which may be passed . . . in any future session of Parliament (*Cf. Leamington Priors Gas Co.* v. *Davis* (1886), cited under sect. 35, *post*, p. 240).

As a general rule, whenever it is possible to put upon an Act of Parliament a construction which is not retrospective, the courts will adopt that construction (*Gardner* v. *Lucas* (1878), 3 App. Cas. 582; *Reid* v. *Reid* (1886), 31 Ch. D. 402; *R.* v. *Smith* (1873), L. R. 8 Q. B. 146; and *R.* v. *Vine* (1875), L. R. 10 Q. B. 195; *cf. The Ydun*, [1899] P. 236). It is a cardinal principle in the interpretation of a statute, that if there are two inconsistent enactments, it must be seen if one cannot be read as a qualification of the other (*per* James, L.J., in *Ebbs* v. *Boulnois* (1875), L. R. 10 Ch. 484).

A *general* Act of Parliament does not repeal a previous *particular* Act, unless there are express words, or unless the two Acts are necessarily inconsistent (*Thorpe* v. *Adams* (1871), L. R. 6 C. P. 125; *London and Blackwall Rail. Co.* v. *Limehouse B. of W.* (1856), 3 K. & J. 123; *Earl of Shrewsbury* v. *Scott* (1860), 6 C. B. (n.s.) 1, 221; and see *R.* v. *Champneys* (1871), L. R. 6 C. P. at p. 394; *Ashton-under-Lyne Corporation* v. *Pugh*, [1898] 1 Q. B. 45; *L. & N. W. Rail. Co.* v. *Runcorn R. D. C.*, [1898] 1 Ch. 561). See further the cases cited at p. 156, in reference to local Building Acts. Where a general Act of Parliament is incorporated with a special Act, if there is any contradiction between them, the special Act is to prevail (*Attorney-General* v. *G. E. Rail. Co.* (1873), L. R. 6 H. L. 367). As to the repeal of a general Act by an inconsistent local and personal Act, see *Ex parte Kelly* (1874), 9 Ir. R. C. L. 114; *Hill* v. *Hall* (1876), 1 Ex. D. 411; *Fortescue* v. *Vestry of St. Matthew, Bethnal Green*, [1891] 2 Q. B. 170. Where the legislature has vested special powers in a particular body for certain special purposes, a general Act subsequently passed will not override those special powers (*London and Blackwall Rail. Co.* v. *Limehouse B. of W.*, *supra*).

As to the construction of ambiguous enactments imposing rates, see *South Staffordshire Waterworks Co.* v. *Barrow* (1897), 61 J. P. 661, cited more fully *post*, p. 512 (notes to s. 68 of Waterworks Clauses Act, 1847). As to whether a proviso can be so construed as to enlarge by implication the effect of the section to which it is a proviso, see *per* Lord Halsbury, L.C., in *West Derby Union* v. *Metropolitan Life Assurance Co.*, [1897] A. C., at p. 651, and *per* Collins, M.R., in *In re Arbitration between New River Co. and Metropolitan Water Board* (1904), 68 J. P. 329.

It is well settled that marginal notes to the sections of an Act of Parliament cannot be referred to for the purpose of construing the Act. The contrary opinion originated in a mistake, and it has been exploded long ago (*per* Lord Macnaghten in *Thakurain Balraj Kunwar* v. *Rae Jagatpal Singh*, L. R. 3 Ind. App. at p. 142).

Interpretation of terms.

4. Terms used in this Act have the same meanings respectively as the same terms have when used in the Gasworks Clauses Act, 1847, and in the Gas and Water Works Facilities Act, 1870.

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The term "prescribed" in this Act shall mean prescribed by the special Act:

The term "premises" in this Act shall include house and building:

And the expression "superior courts" or "court of competent jurisdiction" in this Act, or in any Act wholly or partially incorporated herewith, shall be read and have effect as if the debt or demand in respect of which the expression is used were an ordinary simple contract debt and not a debt or demand created by statute.

GENERAL PROVISIONS.

Prohibition against erecting gasworks elsewhere than on lands specified in schedule.

5. The undertakers shall not manufacture gas, or any residual products, except upon lands described in the special Act, and they shall not store gas, except upon those lands, without the previous consent in writing of the owner, lessee, and occupier of every dwelling-house situate within three hundred yards of the limits of the site where such gas is intended to be stored.

See Standing Orders, referred to *ante*, p. 155.

It is usual to insert in gas bills a clause giving power to the company to purchase additional land not exceeding a certain limited quantity and providing that the company shall not create or permit nuisance on such lands, nor use the same for the manufacture of gas or residual products. See Model Gas Bill.

Sale of superfluous lands.

6. The undertakers may sell and dispose of any lands which are vested in them, or which they are authorised to purchase, or which they may hereafter acquire, and which shall not be required for the purposes of the undertaking, and the provisions of the Lands Clauses Consolidation Act, 1845, sections 128 to 132 (both sections inclusive), shall apply to any such sale; and the undertakers may also from time to time sell and dispose of any works, buildings, or erections on any lands belonging to them which shall not be required for the purposes of the undertaking.

Sects. 128 to 132 and the cases decided under them will be found later under the Lands Clauses Consolidation Act, 1845.

Receipts of guardians, etc., to be sufficient discharge.

7. If any money be payable to a shareholder in a gas undertaking, being a minor, idiot, or lunatic, the receipt of his or her respective guardian or committee shall be a sufficient discharge to the undertakers for the same.

For appointment of receiver.

8. The mortgagees of the undertakers may enforce payment of arrears of interest or principal, or principal and interest, due on their mortgages, in England and Ireland by the appointment of a receiver, and in Scotland by the appointment of a judicial factor; and in order to authorise the appointment of a receiver or judicial factor in respect of principal, or principal and interest, the amount owing to the mortgagees by whom the application for a receiver is made shall not be less than in the whole one thousand pounds, or such sum as shall be specified in the special Act.

Undertakers not exempted from indictment.

9. Nothing in this or the special Act shall exonerate the undertakers from any indictment, action, or other proceeding for nuisance in the event of any nuisance being caused by them.

See s. 29 of the Act of 1847, and notes thereto, *ante*, p. 198.

Power to take easements, etc., by agreement.

10. Persons empowered by the Lands Clauses Consolidation Act, 1845, to sell and convey or release lands, may, if they think fit, subject to the provisions of that Act, and of the Lands Clauses Consolidation Acts Amendment Act, 1860, grant to the undertakers any easement, right, or privilege, not being an easement of water, required for the purposes of the special Act, in, over, or affecting any such lands; and the provisions of the last-mentioned Acts with respect to lands and rentcharges, as far as the same are applicable in this behalf, shall extend and apply to such grants, or to such easement, rights, or privileges as aforesaid.

See s. 7 of the Lands Clauses Consolidation Act, 1845, *post*. See further the notes to s. 6 of the Waterworks Clauses Act, 1847, at p. 382.

SUPPLY OF GAS TO OWNERS AND OCCUPIERS OF PREMISES.

Undertakers to furnish sufficient supply of gas, to owners and occupiers within the limits of the special Act.

11. The undertakers shall, upon being required so to do by the owner or occupier of any premises situate within twenty-five yards from any main of the undertakers, or such other distance as may be prescribed, give and continue to give a supply of gas for such premises, under such pressure in the main as may be prescribed, and they shall furnish and lay any pipe that may be necessary for such purpose, subject to the conditions following; (that is to say,)

The cost of so much of any pipe for the supply of gas to any owner or occupier as may be laid upon the property of such owner or in the possession of such occupier, and of so much of any such pipe as may be laid for a greater distance than thirty feet from any pipe of the undertakers, although not on such property, shall be defrayed by such owner or occupier.

Every owner or occupier of premises requiring a supply of gas shall—

Serve a notice upon the undertakers at their office specifying the premises in respect of which such supply is required, and the day (not being an earlier day than a reasonable time * after the date of the service of such notice) upon which such supply is required to commence;

Enter into a written contract with the undertakers (if required by them so to do) to continue to receive and pay for a supply of gas for a period of at least two years, of such an amount that

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* The provision of this section (where applicable) as to reasonable times supersedes the requirement of seven days notice in s. 17 of the Metropolis Gas Act, 1860. See *ante*, pp. 220, 221, for the decisions as to whether the Act of 1871 applies to the enumerated metropolitan companies, and see particularly *South Metropolitan Gas Co.* v. *Noakes* (1889), 61 L. T. 556, *ante*, p. 220.

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the rent payable for the same shall not be less than twenty pounds per centum per annum on the outlay incurred by the undertakers in providing any pipe to be provided by them for the purpose of such supply; and

Give to the undertakers (if required by them so to do) security for the payment to them of all moneys which may become due to them by such owner or occupier in respect of any pipe to be furnished by the undertakers and in respect of gas to be supplied by them.

Provided always, that the undertakers may, after they have given a supply of gas for any premises, by notice in writing, require the owner or occupier of such premises, within seven days after the date of the service of such notice, to give to them security for the payment of all moneys which may from time to time become due to them in respect of such supply, in case such owner or occupier has not already given such security, or in case any security given has become invalid, or is insufficient, and in case any such owner or occupier fails to comply with the terms of such notice, the undertakers may, if they please, discontinue to supply gas for such premises so long as such failure continues.

Position of successor to a defaulting occupier.

Before the passing of this Act it was not compulsory on a gas company to supply gas. The Act of 1847, s. 13, merely gave them the power to contract, and s. 16 of the same Act gave them power to cut off the supply where the persons supplied failed to pay the rent due. Now, subject to the conditions of this section being fulfilled, a gas company is compelled to supply gas to an owner or occupier requiring it, and though they may cut off the supply from a defaulting occupier they cannot refuse to supply a succeeding occupier who requires a supply, even though arrears are due from his predecessor, unless the incoming tenant has undertaken with the former tenant to pay or exonerate him from the payment of such arrears (s. 39). This is the position under the general Acts, and s. 39 of the Metropolis Gas Act, 1860, has provisions similar to those contained in s. 39 of this Act. The Gas Light and Coke Co. have in their special Act provisions considerably wider than these, and have endeavoured to establish a right to recover from an incoming tenant by suing him for arrears due from the outgoing tenant. Sect. 18 of their private Act of 1872 provides that, "In case any consumer leave the premises where gas was supplied to him without paying to the company the rate or meter rent due from him, the company shall not require from the next tenant of the premises payment of the arrears so left unpaid, unless the incoming tenant agreed with the defaulting consumer to pay the arrears; or unless the incoming tenant shall continue the trade or business of the outgoing tenant, and shall have paid to the owner, lessee, or mortgagee in possession, or to the outgoing tenant of such premises a consideration for so doing. . . ." It was held in *Gaslight and Coke Co.* v. *Mead* (1876), 45 L. J. M. C. 71, that they had no power to recover from, by suing, an incoming tenant who was within the exceptions set out in the above section, the arrears due from the outgoer, but only to require payment of the arrears from the incoming tenant as a condition of their supplying him with gas. This case was approved in *Gaslight and Coke Co.* v. *Cannon Brewery Co.*, [1904] A. C. 321, and it may be now taken to be settled law that there is no power in a gas company to recover from an incoming tenant, by suing him, arrears due from his predecessor.

Extent of power to cut

The power of cutting off the supply of gas in case of refusal to pay what is due for gas supplied would appear to extend to all the premises

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at which the defaulting consumer is using the undertakers' gas, even though the arrears may be in respect of one or some only of the premises. By a statute of the province of Canada a gas company was authorised to supply gas. This Act contained a clause based upon the unrepealed portion of s. 16 of the Gasworks Clauses Act, 1847, and was to the following effect: "If any person . . . supplied with gas by the company shall neglect to pay any rate, rent, or charge due to the . . . company at any of the times fixed for the payment thereof, it shall be lawful for the company . . . on giving twenty-four hours' previous notice to stop the gas from entering the premises, service pipes, or lamps of any such person . . . by cutting off the said service pipe or pipes or by such other means as the company shall think fit:"—*Held*, by the Judicial Committee of the Privy Council, that where a consumer is supplied with gas for several houses or places of business, and he neglects or refuses to pay what is due for gas supplied to any one of them, the gas company are entitled under the section to cut off the supply to all of them (*Montreal Gas Co.* v. *Cadieux*, [1899] A. C. 589). The judgment of the Privy Council was delivered by Sir Henry Strong, who said: "The case appears to their Lordships to be too clear for argument. The only question is a question of fact. Is the respondent, in the words of the Act, a person supplied with gas by the company who has neglected to pay a rate, rent, or charge due to the company at the time fixed for payment thereof? It cannot be disputed that he is. The occasion, therefore, has arisen which authorises the company to stop the gas from entering his service pipes. There is nothing in the Act to limit the right of the company to the service pipes of the defaulter in a particular building or connected with a particular meter in respect of which the default has been committed. There is nothing in the Act to throw the rate, rent, or charge for gas upon the premises for which the supply is furnished or to make it payable out of the premises of the defaulter. The supply is to the consumer and the default is the consumer's default. His liability to the company is a liability for the whole of the debt which he owes them at the time." *Cf.* the terms of s. 74 of the Waterworks Clauses Act, 1847, *post*, p. 515.

off supply of gas.

Refusal of supply to person in arrear at other premises.

A special clause has been commonly inserted in recent Gas Acts authorising gas companies to refuse a supply to persons in arrear in respect of other premises, and by clause 32 of the Model Gas Bill, at p. 370, *post*, it is provided that "if a person requiring a supply of gas from the company has previously quitted premises at which gas was supplied to him by the company without paying to them all the gas charges and meter rents due from him to the company, they may refuse to furnish to him a supply of gas until he pays the same."

Gas Light and Coke Company.

Under the Gas Light and Coke Company's Act, 1870 (34 Vict. c. cxxi.), s. 12, "every occupier of premises shall, if required by the company, sign a contract with the company in the form as nearly as may be in the 2nd Schedule to this Act annexed, and if any occupier shall refuse to sign such contract, if so required, the company shall be at liberty to discontinue the supply of gas forthwith, and to remove the meter. The form in the 2nd Schedule to the Act is as follows:—

THE GAS LIGHT AND COKE COMPANY.

I, of , do hereby contract with the Gas Light and Coke Company for a supply of gas by meter, per thousand cubic feet, and per quarter for the use of the Company's light meter, and if the meter shall from any cause cease or omit to register accurately the quantity of gas used, I hereby agree to pay, in respect of the gas consumed, a reasonable portion at the above rate, for and during the period of such non-registration, and I agree to pay the rent [quarterly] and hold myself liable for all gas consumed on the above premises whether by myself or others until notice in writing be given by me to the Company.

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I also agree that the meter shall be accessible at all reasonable times to the inspection of the Company's inspector or servants.

(Signed) , Consumer.
Witness, , Inspector.

"Owners or occupiers," who are under particular circumstances.

No definition is given in the Gasworks Clauses Act, 1871 of the term "owner or occupier" used in s. 11, and difficulties have arisen in determining who is the occupier of premises where a defaulter has got into financial difficulties. Such defaulter may be a private individual or a company, and it is proposed to shortly summarise the cases on this point.

(1.) Where a receiving order has been made the official receiver is not an "occupier," and so entitled to demand a supply of gas, but is merely a "caretaker," and the debtor remains the occupier, notwithstanding the appointment of the official receiver (*Re Smith, Ex parte Mason*, [1893] 1 Q. B. 323). In that case a receiving order having been made against a debtor, the gas company cut off the supply of gas to his premises, and refused to reconnect it until the arrears of gas rent due from him were paid, whereupon the official receiver paid the amount under protest. The debtor having been adjudicated bankrupt:—*Held*, that the trustee in bankruptcy was not entitled to recover back from the gas company the amount so paid by the official receiver, for, notwithstanding the receiving order, the debtor continued to be the occupier of the premises, and there was consequently no obligation on the part of the company to supply gas to such premises without payment of the arrears due to them. VAUGHAN WILLIAMS, J., said: "There cannot be two owners or occupiers of the same undivided premises at the same time, and, that being so, it is plain that the receiver could not claim a supply of gas as 'occupier' here unless he was in a position to say that the occupation of the debtor had come to an end. It seems to me quite plain that the occupation of the debtor had not come to an end. The case of *Rhodes* v. *Dawson* (1886), 16 Q. B. D. 548, shows that his estate is unaltered by the making of the receiving order."

(2.) Where a receiver and manager of a business is appointed, such receiver is not an incoming tenant entitled as "occupier" to demand a supply of gas, but the undertakers may first insist on the arrears of rent being paid. In *Paterson* v. *Gaslight and Coke Co.*, [1896] 2 Ch. 476 (a case decided under s. 18 of the Gaslight and Coke Company's Act, 1872), a limited company was supplied with gas by a gas company. P. was appointed receiver and manager of the business by debenture-holders, and shortly afterwards P. and S. were appointed by the court joint receivers and managers in an action on behalf of a higher class of debenture holders. They entered and carried on the business and were supplied with gas by the gas company. At the time when P. was appointed there was due to the gas company £90 for gas supplied to the business. The gas company threatened to cut off the supply unless the £90 arrears were paid, and the receiver brought an action to restrain them:—*Held*, on appeal, that the relation of the plaintiffs to the mill company was not that of incoming and outgoing tenant, but of caretaker and owner, and that the plaintiffs were in no better position against the gas company than the mill company were, and could not claim a supply of gas except on payment of arrears. LINDLEY, L.J., said: "The term 'occupier' is ambiguous. In one sense a caretaker is an occupier, but in another sense his occupation is that of some other person . . . The plaintiffs' rights as receivers and managers were mainly those of custodians of the mill company's property. The relation of the mill company to the plaintiffs was not the relation of outgoing and incoming tenant, nor of vendor or purchaser, but that of owner and caretaker. See also as to the position of a receiver, *Gosling* v. *Gaskell*, [1897] A. C. 575. In *In re Marriage, Neave & Co., North of England Trustee Debenture and Assets Corporation* v. *Marriage, Neave & Co.*, [1896] 2 Ch. 663 (a case analogous to *Paterson's Case*, *supra*), where the question was whether there had been a change of occupation within s. 16 of the Poor Rate Assessment and Collection Act, 1869, it was held that when an order is made appointing a receiver and manager of a company's business, but not directing delivery up of possession to him, and thereupon the receiver and manager enters upon the company's premises for the purpose of managing and carrying on the business, there is no change of occupation within s. 16 of the Poor Rate Assessment and Collection Act, 1869; and accordingly, under s. 2 of 43 Eliz. c. 2, and s. 161 of the Metropolis Management Act, 1855, the company's goods are liable to distress for the whole of the parish rates made for the half-year in which the order has been made, and this right of distress vested in the churchwardens and overseers of the parish prevails as against the equitable charge created by debentures charging, in the usual form, all the property of the company, where there is no assignment of chattels in the covering deed. At the date when a receiver was appointed in a debenture-holders' action against a company, the company owed a sum of money to a gas company for gas supplied, which the receiver refused to pay. The debentures were not secured by a trust deed and operated only as an equitable charge on the company's property and assets. The gas company obtained, under s. 23 of the Gasworks Clauses Act, 1871, and s. 74 of their special Act (which provided that sums payable to the company might be recovered summarily or by action), an order and warrant from justices empowering them to levy a distress on the company's goods and chattels for the amount of the debt, and then applied in the debenture-holders' action for leave to proceed with the distress:—*Held*, that the statutory rights of the gas company overrode the equitable rights of the debenture-holders, and leave was granted them to proceed with the distress (*Johnson and Hughes* v. *Adolphe Crosbie, Ltd.* (1909), 74 J. P. 25); *cf. In re London Pressed Hinge Co., Ltd.*, [1905] 1 Ch. 576. The principle of *Paterson* v. *The Gaslight and Coke Co.*, *supra*, was followed in *Husey* v. *The Gaslight and Coke Co.* (1902), 18 T. L. R. 299. In this case a receiver had been appointed as in *Paterson's Case*, but the order directed the company to give the receiver "possession of the premises so far as is necessary for the purposes of such receivership," whereas in *Paterson's Case* there was no provision in the order appointing the receiver upon his taking actual possession. SWINFEN EADY, J., held that the receiver was not in occupation or the incoming tenant of any of the premises (*cf.* also *Husey* v. *London Electric Supply Corporation*, [1902] 1 Ch. 416). It is submitted that in the case of a private debtor, where there has been an assignment to a trustee for the benefit of the creditors, the trustee is in no better position than the debtor, and cannot demand a supply of gas as "occupier" unless he can show that he is the legal occupier of the premises. So also in the case of a liquidator of a company, the position of the liquidator would appear to be only that of a caretaker.

(3.) As between a mortgagor and mortgagee in the event of a mortgagor making default in the payment of the principal or interest, the position would depend upon the course adopted by the mortgagee. He might either appoint a receiver under s. 19 of the Conveyancing Act, 1881, or he might enter into possession. In the first case, as by s. 24 of the Conveyancing Act, 1881, the receiver would be the agent of the mortgagor, there would be no change of occupation; but in the latter case the mortgagee would, it is submitted, be entitled to claim a supply of gas without being required to first pay any arrears due from the mortgagor. In *In re Mannesmann Tube Co., Ltd., Von Siemens* v. *Mannesmann Tube Co., Ltd.*, [1901] 2 Ch. 93, where holders of debentures of a company commenced an action to enforce their security, and a receiver was appointed, and the company subsequently went into liquidation, it was held that the poor rate and district rate due from the company at the date of the winding-up, and which had been paid by the receiver for the debenture-holders, must be repaid by the liquidator out of the general assets of the company, as the question was one between mortgagor and mortgagee; the mortgagors being liable to pay, the mortgagees were to be recouped what they had paid on behalf of the mortgagors.

(4.) Where a debtor has been adjudged bankrupt it would seem that the official receiver or trustee in bankruptcy is in a different position to that of the receiver where a receiving order only has been made. In that case, as we have seen, the receiver is not an "occupier," but where an adjudication order has been made the official receiver or trustee in bankruptcy

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will be entitled to demand a supply of gas without being required to first pay off arrears of rent. There has been no direct decision on this point under the Gas Acts, but this would seem to be good law as the result of *In re Flack, Ex parte Berry*, [1900] 2 Q. B. 32. That case was decided under s. 48 of the Metropolis Water Act, 1871, and the provisions of that section are similar to those of s. 39 of this Act. It was there held that the trustee in bankruptcy, who had taken possession of the premises and paid arrears of water rate under protest, was in the position of an "incoming tenant," and was not liable for the arrears, and was entitled to recover from the water company the amount paid under protest. WRIGHT, J., stated the position thus: "The debtor on being adjudicated bankrupt ceased to be the tenant or the occupier of the shops which the trustee then took possession of with the view of carrying on the business for the benefit of the estate. The trustee was therefore in the position of an incoming tenant." It is apprehended that the position of the trustee would be exactly the same under the Gas Acts. In the case of a debtor making a composition with his creditors, if a trustee is appointed in pursuance of a composition or scheme the trustee will be in the same position as a trustee in bankruptcy by virtue of s. 3 (17) of the Bankruptcy Act, 1870, and s. 54 of the Bankruptcy Act, 1883.

As to security, see further s. 16, *post*, p. 229, and as to security for meter, see s. 14, *post*, p. 229.

By the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), it is provided as follows:

Power for Board of Trade to relieve gas undertakers from obligation to supply gas in certain cases.

Sect. 29. "Where a supply of electricity is authorised in any area by any licence, order, or special Act, and a supply of gas by any gas undertakers is also authorised within such area or any part thereof by any provisional order or special Act under the provisions of which such gas undertakers are under any general or limited obligation to supply gas upon demand, the Board of Trade may, upon the application of such gas undertakers, inquire into the circumstances of the case, and if they are satisfied that any specified part of such area is sufficiently supplied with electric light, and that the supply of gas in such specified part has ceased to be remunerative to the gas undertakers, and that it is just that such gas undertakers should be relieved from the obligation to supply gas upon demand as aforesaid, the Board of Trade may in their discretion make an order relieving the gas undertakers from such obligation, within such specified part of such area, either wholly or in part, and upon such terms and conditions as they may think proper; and from and after the date of such order such gas undertakers shall be so relieved accordingly. All expenses of the Board of Trade in connection with any such inquiry or order shall be borne and paid by the gas undertakers upon whose application the inquiry or order was made."

Penalties for breach of contract by employers.

See the Conspiracy and Protection of Property Act, 1875, *post*, which exposes to penalties any person employed by a municipal authority, company, etc., for breaches of contract, the probable consequence of which will be to deprive the inhabitants of a supply of gas or water.

Quality of gas.

12. The quality of the gas supplied by the undertakers shall, with respect to its illuminating power, be such as to produce at the testing place provided in conformity with this Act a light equal in intensity to that produced by the prescribed number of sperm candles of six in the pound, and such gas shall as to its purity not exhibit any trace of sulphuretted hydrogen when tested in accordance with the rules prescribed in that behalf in Part II. of the Schedule A. to this Act annexed.

The minimum illuminating power now usually required in gas Acts and provisional orders is a light equal to fourteen sperm candles. See the Introduction at p. 15. As to the method of testing under this Act, see *post*, pp. 248, 249.

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As to the metropolitan companies, see the Metropolis Gas Act, 1860, and the provisions of the special Acts of 1875, 1876, 1880, 1900, 1902, 1903, 1906 and 1909; and the London Gas Act, 1905, *post.*

See the Introduction at p. 14 as to sulphur impurities.

Undertakers may require consumers to use meters.

Sale of Gas Act, 1859, *post*.

13. Every consumer of gas supplied by the undertakers shall, if required to do so by them, consume such gas by a meter duly stamped under the authority of an Act passed in the session of Parliament held in the twenty-second and twenty-third years of the reign of her present Majesty, intituled "An Act for regulating measures used in sales of gas," and being a legal meter within the meaning of the said Act, or by a meter supplied or approved by the undertakers: Provided always, that where the provisions of the said Act are in force no meter shall be used unless the same be a legal meter within the meaning of the said Act, and that elsewhere the undertakers shall not refuse to approve of any meter which when duly tested according to the rules contained in the said Act for regulating measures used in sales of gas is found to be correct within the meaning of the said Act.

See notes to ss. 18 and 19, *post,* pp. 230, 232.

Undertakers to supply meters.

14. The undertakers shall supply to any owner or occupier of premises within the limits of the special Act requiring the same a meter for registering gas supplied by them: Provided always, that such owner or occupier shall, if required, previous to receiving such meter, give to the undertakers security for payment to them of the price of such meter if he desires to purchase the same, or of the rent of such meter if he desires to hire the same.

Cf. ss. 11 and 16 on the subject of security.

Meters not to be connected or disconnected without notice.

15. No consumer shall connect any meter with any pipe through which gas is supplied by the undertakers to such meter, or disconnect any meter from any such pipe, unless he shall have given to the undertakers not less than twenty-four hours notice in writing of his intention so to do, and if any person acts in contravention of this section he shall be liable for each offence to a penalty not exceeding forty shillings.

See *Re Gaslight and Coke Co.* (1891), cited *ante,* p. 190.

The manager of a co-operative society sent for a jobbing plumber to do certain work on the society's premises. Amongst other things he directed the plumber to disconnect a gas meter. The plumber was summoned before the justices by the company for having disconnected without notice. The magistrates held that the manager and not the plumber was the person responsible. A Divisional Court, on appeal, affirmed that decision (*Johnson* v. *Gunnhill,* Jl. of G. L., February 9th, 1904).

Nature and amount of security.

16. Where any owner or occupier is required by the special Act to give security to the undertakers, such security may be by way of deposit or otherwise, and of such amount as he and the undertakers agree on, or as, in default of agreement, may be determined, on the application of either party, by two justices, who may also order by which of the parties the costs of the proceedings before them shall

Sect. 16. be paid, and the decision of the justices shall be final and binding on all parties.

As to metropolis, see ss. 15 and 16 of the Metropolis Gas Act, 1860 (23 & 24 Vict. c. 125), and various provisions in the special Acts.

Sometimes provision is made in special Acts for the payment of interest on such deposit. See clause 29 of the Model Gas Bill, *post*, p. 369.

The Preston Gas Act, 1894, s. 43, enables the company to require prepayment for an estimated amount of consumption. A clause to this effect is now frequently inserted.

Consumer to keep his meter in proper order.

17. Every consumer of gas supplied by the undertakers shall at all times, at his own expense, keep all meters belonging to him whereby any gas of the undertakers is registered in proper order for correctly registering such gas, and in default of his so doing the undertakers may cease to supply gas through such meter. The undertakers shall have access to and be at liberty to take off, remove, test, inspect, and replace any such meter at all reasonable times, such taking off, removal, testing, inspecting, and replacing to be done at the expense of the undertakers if the meter be found in proper order, but otherwise at the expense of the consumer.

Power to the undertakers to let meters.

18. The undertakers may let for hire any meter for ascertaining the quantity of gas consumed or supplied and any fittings thereto, for such remuneration in money, and on such terms with respect to the repair of such meter and fittings, and for securing the safety and return to the undertakers of such meter, as may be agreed upon between the hirer and the undertakers, and such remuneration shall be recoverable in the same manner as the rents or sums due to the undertakers for gas, and such meters and fittings shall not be subject to distress, or to the landlord's remedy for rent of the premises where the same may be used, nor to be taken in execution under any process of a court of law or equity, or any proceedings in bankruptcy against the persons in whose possession the same may be.

A gas stove let for hire has been held to be a "fitting for the gas" within the meaning of s. 14 of the Act of 1847, and therefore not liable to distress for rent (*Gaslight and Coke Co.* v. *Hardy* (1886), 17 Q. B. D. 619). See cases noted under that section, *ante*, p. 188.

A gas engine was let upon what is known as the hire and purchase system under an agreement in writing which provided that it should not become the property of the hirer until all the instalments stipulated for had been paid, and also that, on failure to pay any instalment, the same might be removed by the owner. The engine was affixed to freehold land of the hirer by bolts and screws to prevent it from rocking, and was used by him for the purpose of working a saw-mill. Default having been made in payment of the instalments, the engine was claimed by the owner and also by a mortgagee of the land who took his mortgage after the hiring agreement and without notice of it, and had entered into possession while the engine was still on the land:—*Held*, that the engine was sufficiently annexed to the land to become a fixture and that any intention to be inferred from the terms of the hiring agreement that it would remain a chattel did not prevent it from becoming a fixture, and consequently that it passed to the mortgagee as part of the freehold (*Hobson* v. *Gorringe*, [1897] 1 Ch. 182). This case was followed in *Reynolds* v. *Ashby*, [1904] A. C. 466.

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A company hired machinery, fixed on its business premises, from L. & H. on the terms of a hire-purchase agreement which provided that the company was to pay a monthly rent for the hire of the machinery, and should become the purchaser on payment of a certain sum, in which event credit should be given for the previous payments of rent. Until the purchase the company was to be a mere bailee of the machinery, and in case of default in making the monthly payments or breach of the conditions of the agreement, L. & H. were empowered to enter and remove the machinery. Subsequently the company gave to a bank an equitable mortgage of the business premises by a deposit of the deeds thereof, accompanied by a written charge under the common seal of the company containing an agreement to give a legal mortgage on demand. The bank took without notice of the hire-purchase agreement. The company failed to pay the instalments and committed breaches of the conditions of the hire-purchase agreement; L. & H. demanded delivery up of the machinery and a winding-up order was made against the company. The principal secured to the bank was due, with an arrear of interest:—*Held*, that the bank being merely an equitable mortgagee, and L. & H. having an equitable interest in the machinery under their hire-purchase agreement, the interest under that agreement had priority over the interest of the bank. *Hobson* v. *Gorringe*, *supra*, and *Reynolds* v. *Ashby*, *supra*, were distinguished (*In re Samuel Allen & Sons, Ltd.*, [1907] 1 Ch. 575).

In the absence of express stipulation to the contrary a mortgagor in possession has the right to permit trade fixtures to be put up and removed from the mortgaged premises provided they are removed before the mortgagee takes possession, but this right of removal ceases when possession is taken by the mortgagee.

In November, 1902, a freehold laundry was mortgaged in the usual form for £400, the mortgagor covenanting not to remove any fixtures without the written consent of the mortgagee. In June, 1903, trade machinery was fixed up in the premises under a hire and purchase agreement, which provided that it should not become the property of the hirer until all instalments had been paid, and should be removable by the owner on the failure of the hirer to pay any instalment. Default having been made in payment of an instalment, the owner entered and removed the machinery. In an action by the mortgagee against the owner of the machinery for wrongful removal:—*Held* (reversing the decision of PHILLIMORE, J.), that the machinery passed to the mortgagee as part of the freehold (*Ellis* v. *Glover & Hobson, Ltd.*, [1908] 1 K. B. 388).

In recent gas Acts a clause has frequently been inserted to the effect that the company may purchase, provide, supply, sell, let for hire, use and otherwise deal in, fit up, alter, repair, remove (but shall not manufacture) engines, machines, stoves, ranges, burners, meters, fittings, pipes, and other apparatus, appliances, and conveniences for heating, ventilating, motive power, cooking, and other domestic, manufacturing, industrial, or other purposes for which gas can or may be used; and the clause goes on to exempt all such things from distress for rent or from liability to be taken in execution under any process of any court or any proceedings in bankruptcy against the persons in whose possession the same may be. The clause also provides that a distinguishing metal plate shall be affixed. See clause 30 of the Model Gas Bill, *post*, p. 369. A provision has also frequently been inserted in recent Gas Acts that notwithstanding that gas engines, motors, etc., may be affixed to a building or to the soil, they shall continue to be the property of and removable by the company. See, *e.g.*, s. 3. (2) of the South Suburban Gas Act, 1905 (5 Edw. 7, c. 18), which provides as follows:

(2.) Subject as hereinafter provided, all engines, motors, dynamos, fittings, apparatus and appliances let by the company on hire shall, notwithstanding that they be fixed or fastened to any part of any premises in which they may be situate or to the soil under any such premises, at all times continue to be the property of and removable by the company: Provided that nothing in this sub-section shall affect the amount of the assessment for rating of

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Sub-sect. (1) of the same section contains the usual provision as to fittings not being subject to distress or execution, and by sub-s. (3) it is provided that the company shall only be entitled to the privileges and exemptions conferred by this section in respect of such engines, motors, dynamos, fittings, apparatus and appliances as shall have upon them respectively a distinguishing metal plate affixed to a conspicuous part thereof, or a distinguishing brand or other mark conspicuously impressed or made thereon sufficiently indicating the company as the actual owners thereof.

Cf. the Shepton Mallet Gas Company (Electric Lighting) Act, 1905, s. 11, which, after the usual words providing that the fittings, etc., let shall not be liable to distress or to the landlord's remedy for rent or to be taken in execution under any process of any court of law or equity or any proceedings in bankruptcy against the person in whose possession the same may be, adds the following words: "or be deemed to be landlord's fixtures or pass with any conveyance or mortgage of the premises wherein the same may be fixed." Provisions of this nature vary what would otherwise be the law as laid down in the cases cited *supra*.

A gas engine was let on an agreement on the hire and purchase system to a manufacturing cooper. The lessee paid the first instalment and the engine was placed on his premises, and while it was still there he became bankrupt, some instalments being overdue. No question arose with mortgagees. It was held by the House of Lords, affirming the decision of the Court of Appeal in Ireland, that upon the true construction of the agreement the property in the engine never passed to the lessee but remained in the lessors; that the transaction was not within the Bills of Sale Acts, and that the lessors were entitled to an order of the Bankruptcy Court for delivery of the engine to them (*McEntire* v. *Crossley Brothers, Ltd.*, [1895] A. C. 457).

All gas meters since 1870 must be stamped in accordance with the provisions of the Act for regulating measures used in sales of gas—the Sale of Gas Act, 1859 (22 & 23 Vict. c. 66), amended by the Sale of Gas Act, 1860 (23 & 24 Vict. c. 146); and as regards the metropolis, by the Metropolis Gas Act, 1861 (24 & 25 Vict. c. 79). See these Acts, *post*, pp. 258 *et seq.* On assessing gasworks to the poor rate, in ascertaining the gross estimated rental a deduction ought to be allowed in respect of the cost of the meters, which belong to the gas company, but are put up on the premises of the consumers and are connected with the service pipes by solder, and by means of those pipes with the company's mains; as they are mere chattels (*R. on the prosecution of the Phœnix Gaslight and Coke Co.* v. *The Inhabitants of Lee* (1866), L. R. 1 Q. B. 241). See also *Ipswich Gaslight Co.* v. *Ipswich Union*, cited *ante*, p. 208).

Undertakers to keep meter let for hire in repair.

19. The undertakers shall at all times, at their own expense, keep all meters let for hire by them to any consumer in proper order for correctly registering gas, and in default of their so doing the consumer shall not be liable to pay rent for the same during such time as such default continues. The undertakers shall, for the purposes aforesaid, have access to and be at liberty to remove, test, inspect, and replace any such meter at all reasonable times.

See notes to s. 14 of the Gasworks Clauses Act, 1847, *ante*, p. 188.

Register of gas meters to be primâ facie evidence.

20. The register of the meter shall be primâ facie evidence of the quantity of gas consumed, and in respect of which any rent is charged and sought to be recovered by the undertakers: Provided always, that if the undertakers and the consumer differ as to the quantity consumed, such difference may be determined, upon the application of either party, by two justices, who may also order by which of the parties the costs of the proceedings before them shall be paid, and the decision of the justices shall be final and binding on all parties.

See the following cases where disputes under this section were adjudicated upon by magistrates:—

Cresswell v. *Gaslight and Coke Co.*, reported Jl. of G. L., November 2nd, 1897, p. 951, and the *Wandsworth Case* and the *Richmond Case* there cited.

Where through the defective mechanism of a prepayment meter, more gas was given out and used than the coins in the box warranted, it was held, in an action in the county court, that the company could not recover from the consumer for the difference in the absence of special agreement to that effect (*Kendal Gas and Water Co.* v. *Atkinson*, Jl. of G. L., May 22nd, 1894, vol. 63, p. 967). A decision to the like effect was given at Dolgelly County Court in the case of *Barmouth Gas Co.* v. *Hughes*, Jl. of G. L., December 15th, 1903, p. 695.

The relations between the consumer and a gas company in regard to prepayment meters depend entirely on the terms of the agreement signed by the consumer. These agreements vary. This may explain the fact of the seeming contradictions in the cases which will now be noted.

Where coins deposited in a prepayment meter were stolen without any neglect on the part of the consumer, it was held that the gas company could not recover the money from the consumer who had already paid for the gas according to the contract by dropping the coin into the slot (*Edmundson* v. *Longton Corporation* (1902), 19 T. L. R. 15). In a prosecution at a later date for larceny of coins from a prepayment meter, the property in the coins was laid in the gas company. The Chairman of Quarter Sessions ruled that the property had been wrongly laid in the gas company, and directed a verdict of not guilty. The *Longton Case, supra*, was not cited (*Re Blyth and Cowper Gas Co.*, Jl. of G. L., July 7th, 1903, p. 53; Electrician, July 10, 1903, p. 508).

A slot meter and sundry fittings thereto let by a gas company for hire were destroyed by a fire at the consumer's premises. The agreement which he signed contained the following: "And I undertake that the above-named articles shall not be sold, removed or damaged (fair wear and tear excepted) whilst hired by me." The company having sued the consumer for the value of the things destroyed, His Honour Judge Tindal Atkinson at the Waltham Abbey County Court gave judgment for the plaintiff (*Enfield Gas Co.* v. *Davies*, Jl. of G. L., January 19th, 1904, p. 158).

At the West London Police Court the Gas Light and Coke Co. summoned a number of gas consumers (chiefly belonging to the working class) for the price of gas registered as having been consumed by a prepayment meter. The defence was that someone falsely representing himself as one of the company's collectors went round to the consumers' houses and by means of a key opened the meters and took away the coins. The agreement contained the following clause: "If from any cause the money in the meters does not correspond with the amount of gas consumed, the consumer must make good the deficiency." The magistrate held upon this that the consumers were liable, but suggested a compromise which was afterwards effected (see Jl. of G. L., February 19th, 1904, p. 348).

Three several consumers by the slot meter system were summoned at the Marylebone Police Court before Mr. Curtis Bennett for the recovery of the amount due for gas supplied. The defence was that a sham collector in uniform had called and taken away the money in each case. The magistrate held that under the terms of the agreement between the parties, the responsibility of the defendants did not end when the coin was put into the meter, but continued until the money had been collected by the authorised agent of

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the company. Orders were accordingly made for the payment of costs in each case. See Jl. of G. L. January 19th, 1904, p. 158.

Cf. a decision under the Electric Lighting Acts (*City of London Electric Lighting Co.* v. *Oakley*, Times, November 12th, 1902; Electrician, November 14th 1902, p. 158; Electrical Review, November 14th, 1902, p. 817; Jl. of G. L., November 18th, 1902, p. 1332). See further on this subject, in the INTRODUCTION.

A meter having registered insufficiently for many years, the gas company, on discovering this, brought an action to recover £884 in respect of the last six years, and recovered judgment (*South Metropolitan Gas Co.* v. *Bermondsey Borough Council* (1901), 17 T. L. R. 530).

In certain granaries certain large lights were installed by a gas company, each having a separate meter. The owners brought an action in the county court to recover £71 3*s.* 5*d.* as the amount overpaid to the defendants for gas, through the meters registering too fast. The defendants had, in fact, made an allowance for a period of five months. For the company, it was contended that there was a clause in the conditions printed on the card attached to the meter, that no allowance could be made for gas registration except for the current quarter. His Honour Judge Emden held, on the evidence, that four of these meters had registered too fast, and he gave judgment for the plaintiffs, holding that there was a duty on the company to keep their meters in proper order so as to correctly register the gas which passed through them; and he also held, on the evidence, that there was an inference that the meters had been registering incorrectly for a longer period than the five months for which the company had made allowance (*Vogan* v. *South Metropolitan Gas Co.*, Jl. of G. L., October 24th, 1905, p. 247; October 31st, 1905, p. 319).

The following clause is now contained in the Model Gas Bill (No. 34) and is inserted in all recent gas Acts:

As to incorrect meters in certain cases.

In the event of any meter used by a consumer of gas being tested in manner provided by the Sale of Gas Act, 1859, and being proved to register erroneously within the meaning of the said Act, such erroneous registration shall be deemed to have first arisen during the then last preceding quarter of the year, unless it be proved to have first arisen during the then current quarter. The amount of the allowance to be made to, or of the surcharge to be made upon, the consumer by the company shall be paid by or to the company to or by the consumer, as the case may be, and shall be recoverable in the like manner as gas rents are recoverable by the company.

Power to enter buildings for ascertaining quantities of gas consumed.

21. Any officer appointed by the undertakers may at all reasonable times enter any building or land lighted with gas supplied by the undertakers, in order to inspect the meters, fittings, and works for the supply of gas, and for the purpose of ascertaining the quantity of gas consumed or supplied; and if any person hinder such officer as aforesaid from entering and making such inspection as aforesaid at any reasonable time, he shall for every such offence forfeit to the undertakers a sum not exceeding five pounds.

A collector calling at a house, where a slot meter was fixed, and the inmates of which happened to be out, knocked at the door and received no answer, whereupon he pulled a string which lifted the latch, and entered the house and took the pennies from the slot meter. The county court judge held this to be a trespass, and gave judgment for 6*d.*, in addition to 5*s.* which had been paid into court, with costs (*Birsdall* v. *Wakefield Gas Co.*, Jl. of G. L., December 17th, 1901, p. 1604).

Power to remove meter and fittings.

22. In all cases in which a consumer of gas supplied by the undertakers ceases to require a supply of such gas, and in all cases in which the undertakers are authorised to take away and cut off the supply of gas from any premises, it shall be lawful for the undertakers, their agents, or workmen, after twenty-four hours' notice in writing, under the hand of the secretary or other properly authorised officer of the undertakers, to the occupier, or if unoccupied, then to the owner or lessee, or to the agent of the owner or lessee, of any premises in which any pipes, meters, fittings, or apparatus belonging to the undertakers are laid or fixed, and through or in which the supply of gas is from any such cause discontinued, to enter such premises between the hours of nine in the morning and four in the evening, for the purpose of removing and to remove such pipes, meters, fittings, or apparatus, repairing all damage caused by such entry or removal.

This section takes the place of s. 17 of the Act of 1847, repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict, c. 66), except so far as incorporated with special Acts to which the Act of 1871 does not apply.

Difficulties may perhaps arise under this section when the fittings are affixed to premises which have been mortgaged (see the cases cited in the note under s. 18, *ante*, p. 230), or when at the request of a tenant they have been fixed to the freehold and thus belong to the freeholder.

Recovery of charges for gas.

23. In case any person who shall have been supplied with gas by the undertakers shall neglect or refuse to pay the amount due in respect of such supply, any justice may issue his summons to such person, requiring him to appear at a time and place named therein, and then and there to show cause why the sum so demanded should not be paid; and if on the appearance of such person, or in default of appearance after proof of the service of the summons, either personally or at the last known place of abode or of business of such person, no sufficient cause can be shown to the contrary, any justice may issue his warrant of distress for the seizure and sale of the goods and chattels of such person, for the recovery of the amount which may be proved before such justice to be due from such person, together with such costs, including the cost of cutting off the gas, if the same shall have been cut off by the undertakers, as to such justice shall seem just and reasonable.

Cf. s. 40, *post*, p. 246.

SUPPLY OF GAS TO LOCAL AUTHORITIES.

Supply and price of gas to public lamps.

24. The undertakers shall supply gas to any public lamps within the distance of fifty yards from any of the mains of the undertakers in such quantities as the local authority of each district or the trustees of any turnpike road or any highway board within the limits of the special Act may from time to time require to be supplied, and the price to be charged by the undertakers and to be paid to them for all gas so supplied shall be settled by agreement between the local authorities and the undertakers, and in case of difference by arbitration, regard being had to the circumstances of the case and the prices charged to private consumers in the district.

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Sect. 27 provides that the arbitration shall be in manner provided by the Companies Clauses Consolidation Act, 1845.

A gas company is under no obligation under this Act to supply gas to the public lamps at a price less than that charged to private consumers.

In an arbitration in 1867 to settle price, the umpire (the Hon. G. DENMAN, Q.C., afterwards Mr. Justice DENMAN) adopted the following calculation. (See report of the Gravesend Arbitration, Jl. of G. L., December 24th, 1867, vol. 16, p. 1031.)

" Statement showing cost price of gas for year ending June, 1867.

	s.	*d.*
Net cost of manufacture	2	1·62
" distribution	0	1·28
" management	0	2·71
General charges	0	5·18
	2	10·79
Annual contribution to reserved fund, 1 per cent. on capital ...	0	1·87
Dividend, 10 per cent.	1	6·78
Total charge for public lamps per 1,000 feet	4	7·44"

The percentage of dividend may vary where there is a sliding scale.

Many special Acts contain an enactment to the effect that the company shall not charge a higher price per 1,000 cubic feet for gas supplied to any local authority than the lowest rate per 1,000 cubic feet from time to time charged by them to any private consumers in the district supplied by the company. Similar provisions are to be found in provisional orders.

As to the lighting of streets in urban districts, see, further, ss. 150, 161 of the Public Health Act, 1875, *post;* and as to public lamps in rural districts, see the Public Health Act, 1875, s. 163, and notes thereto, *post,* and the Lighting and Watching Act, 1833, *post.* By s. 276 urban powers may be conferred on a rural authority by the Local Government Board.

As to the metropolis, s. 37 of the Metropolis Gas Act, 1860, has been repealed and superseded by special provisions of the special Acts of metropolitan companies. See, *e.g.*, City of London Gas Act, 1868, ss. 3, 86; Gaslight and Coke Company's Act, 1868, ss. 8, 109; Commercial Gas Act, 1875, ss. 3, 69; Gaslight and Coke Company's Act, 1876, s. 8, Sched. B; South Metropolitan Gas Act, 1869, ss. 4, 68.

In a case turning on the construction of a special Act, a gas company was held to be entitled to the full price of gas supplied to public lamps, though by reason of exceptional frosts they had been unable to afford a full supply. (See *In re Richmond Gas Co. and the Mayor, etc. of Richmond,* cited *ante,* p. 186.)

See s. 36, *post,* p. 241, which imposes a penalty for neglect or refusal to supply gas to public lamps, and see also the notes thereunder.

A Bill promoted by a gas company to raise the price of gas to private consumers does not affect the rights, privileges, or duties of the local authority, being large consumers for public lighting in the district, so as to enable the local authority (independently of the powers obtainable under the Borough Funds Acts) to pay the costs of opposing the Bill out of public funds under their control (*Attorney-General* v. *Swansea Corporation,* [1898] 1 Ch. 602; 62 J. P. 405).

By the Oldham Gas Act, 1886, s. 31, a differential rate charged on outside districts was abolished, and by s. 30 the corporation were not to make any greater profit on gas than was necessary to pay defined charges, any surplus enuring to the benefit of all consumers, within and without the district, in reduction of price. By s. 96 of the Oldham Act, 1865, the corporation were entitled to supply gas or water gratuitously for "public advantage."

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They accordingly lighted the borough of Oldham gratuitously. The outlying districts contended that the benefit of this public lighting (which was said to be £6,000 a year) should be brought into account in a question with outlying districts. It was held by COLLINS, J., and afterwards by the Court of Appeal, that the lighting of the streets of Oldham was a public advantage; that the corporation obtained no "receipts" in respect thereof, and were therefore not bound to bring the same into account (*Attorney-General* v. *Oldham Corporation*, Jl. of G. L., 1891, vol. 58, p. 804, and vol. 59, p. 759).

As to the cost of the pipes necessary for the conveyance of gas to public lamps, see *Liverpool United Gaslight Co.* v. *Liverpool Corporation*, Jl. of G. L., 1910, vol. 110, pp. 251, 383.

As to consumption of gas supplied to the public lamps.

25. The gas supplied to the public lamps within the limits of the special Act shall be consumed by meter, at the option either of the local authority of the district or the undertakers, and in case of its being consumed by meter the meter shall be provided and fixed by the undertakers, and be paid for by the party requiring it.

If the gas is supplied to the public lamps in any district by average meter indication, the undertakers shall, for securing uniformity of consumption between metered and unmetered lamps, from time to time provide the public lamps in such district with proper self-acting pressure regulators and burners to the satisfaction of the local authority of such district; and the average amount of the indications of all the meters attached to the public lamps within such district under the control of the local authority shall, except as hereinafter mentioned, be deemed to be the amount consumed by each such lamp in such district.

As to the metropolis, see *post*, Commercial Gas Act, 1875, s. 84; Gaslight and Coke Company's Act, 1876, s. 32; and South Metropolitan Act, 1876, s. 33.

Governors for street lamps.

26. In case gas is supplied to the public lamps in any district by the undertakers, they or the local authority of such district may, at their own expense, cause to be affixed to each lamp the instrument known as a street lamp governor, and the undertakers or such local authority (as the case requires) shall be entitled to have access thereto for the purpose of examining the same.

For settlement of differences between the undertakers and the local authority.

27. Any difference which may arise between the undertakers and any local authority in relation to the supply or consumption of gas to or by such local authority shall be from time to time settled by arbitration in manner provided by the Companies Clauses Consolidation Act, 1845, with respect to the settlement of disputes by arbitration.

With respect to the settlement of disputes by arbitration under the Companies Clauses Consolidation Act, 1845, see ss. 128 *et seq.* of that Act, *post.*

TESTING OF GAS.

Testing place

28. The undertakers shall cause to be provided, at the place prescribed and within the prescribed time, a testing place, with apparatus therein, for the purposes following, or such of them as may be prescribed by the special Act, that is to say,—

1. For testing the illuminating power of the gas supplied:

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2. For testing the presence of sulphuretted hydrogen in the gas supplied.

The said apparatus shall be in accordance with the regulations prescribed in Part I. of the Schedule A. to this Act annexed, or according to such rules as may from time to time be substituted in lieu thereof by any special Act, and shall be so situated and arranged as to be used for the purpose of testing the illuminating power and purity of the gas supplied by the undertakers, and the undertakers shall at all times thereafter keep and maintain such testing place and apparatus in good repair and working order.

Special Acts since this date prescribe the testing place. See clause 24 in the Model Gas Bill.

For a section authorising a local authority (the gas undertaking being in the hands of a company) to provide and maintain a testing place at their own cost at the municipal offices, or other municipal buildings, with apparatus for testing purity and illuminating power, see Bridgwater Gas Act, 1903 (3 Edw. 7, c. xix.), s. 79; North Middlesex Gas Act, 1903 (3 Edw. 7, c. viii.), s. 21; Colney Hatch Gas Act, 1904 (4 Edw. 7, c. xlii.), s. 38.

The Felixstowe Gas Act, 1904, s. 63, enacts that the prescribed testing place shall be a place to be provided by the urban district council at the Town Hall, and that the company shall not be required to provide a testing place under the Act of 1871; and the section further requires two hours' previous notice to be given to the company of the time at which any testing shall be conducted.

A section occurs in the South Shields Company's Gas Act, 1904, authorising the South Shields Corporation and the Jarrow Corporation respectively to provide suitable testing places in their respective boroughs, the company to provide and fix the necessary apparatus for testing. One hour's previous notice is provided for (s. 68).

As to quality of gas in the metropolis, see the Metropolis Gas Acts, *post.*

Appointment and powers of gas examiners.

29. The local authority of any district within the limits of the special Act, where the gas is not supplied by such local authority, may after the passing of the special Act from time to time appoint, or may appoint and keep appointed, a competent and impartial person to be a gas examiner to test the gas at the testing place provided in conformity with the provisions of this Act; and such gas examiner may there test the illuminating power and purity of the gas supplied by the undertakers, on any or every day between the hours of five o'clock and ten o'clock in the afternoon from the first day of October to the thirty-first day of March, both inclusive, and on any or every day between the hours of eight o'clock and eleven o'clock in the afternoon from the first day of April to the thirtieth day of September both inclusive.

Provision is now usually made in special Acts that gas examiners under this section shall test for pressure. See clause 26 (2) in the Model Gas Bill.

In making provisional orders in favour of urban authorities for gas supply, under the Gas and Water Works Facilities Acts, it is the practice of the Local Government Board to except this and certain other sections from incorporation. The following special clause is inserted:

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"For the purposes of the Gasworks Clauses Act, 1871, the prescribed testing place shall be the testing place provided by the corporation as aforesaid and the burner to be used for testing the gas shall be the Metropolitan Argand No. 2 with a six-inch by one and three-quarter-inch glass chimney and if at any time the gas flame tails over the top of the glass a six-inch by two-inch chimney shall be used.

"The Board of Trade may on the application of the corporation approve the use of any other burner photometer or standard light that may appear to that Board to be equally or more suitable for the testing.

"Any gas examiner appointed under the Gasworks Clauses Act, 1871, for the purposes of this order may from time to time subject to the terms of his appointment at the said testing place or elsewhere not being the immediate approach to any railway bridge or railway station as and when he thinks fit test the pressure at which the gas is supplied and for that purpose may open any street, road, passage, or place vested in or under the control of any local or road authority and two hours' previous notice shall be given to the corporation of the time and place at which any testing for pressure elsewhere than at the testing place will be conducted."

Orders made by the Board of Trade—that is to say, orders in favour of companies or individuals—contain similar provisions (though not in the same words), and such orders generally incorporate the Acts of 1847 and 1871, "except where the same are expressly varied by or are inconsistent with this order." Reference may be made to such orders of the Board for the exact terms of the provisions inserted in this behalf.

The question of testing in the metropolis is governed by special provisions. See the Introduction at pp. 63—65.

See further hereon, *London County Council* v. *South Metropolitan Gas Co.*, *post*, p. 335, a case decided under the Acts relating to the metropolis, in which the Court of Appeal had to place a construction upon the word "daily," and decided that Sunday testings were permissible.

30. Where no such gas examiner is appointed, or where the testing of the gas is imperfectly attended to by the local authority, two justices, on the application of consumers of the gas of the undertakers, not being less than five, by order in writing may appoint some competent and impartial person to be gas examiner, and such person may at any time within the hours aforesaid, on producing the said order, enter on the premises of the undertakers, and there test the illuminating power and purity of the gas supplied by them.

Two justices may appoint gas examiner.

31. The undertakers may, if they think fit, on each occasion of the testing of the gas by the gas examiner, be represented by some officer, but such officer shall not interfere in the testing.

Representation of undertakers.

32. Any tests taken in pursuance of this Act shall be taken in accordance with the rules prescribed in Part II. of the Schedule A. to this Act annexed.

Mode of testing.

33. The gas examiner shall, on the day immediately following that on which the testing of the illuminating power or purity of the gas has been conducted, make and deliver a report of the results of his testing to the local authority or justices by whom he was appointed, and to the undertakers, and such report shall be receivable in evidence.

Report of gas examiner.

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Access to testing place.

34. The undertakers shall give to the gas examiner and to his assistants, and to every local authority within the limits of the special Act, and their agents, access to the testing place and shall afford all facilities for the proper execution of this Act; and in case the undertakers make default in complying with any of the provisions of this section they shall for every such default be liable to a penalty not exceeding five pounds to the local authority, or to the persons making the application.

ACCOUNTS.

Accounts, etc.

35. The undertakers shall fill up and forward to the local authority of every district within the limits of the special Act, on or before the twenty-fifth day of March in each year, an annual statement of accounts, made up to the thirty-first day of December then next preceding, as near as may be in the form and containing the particulars specified in the Schedule B. to this Act annexed.

The undertakers shall keep copies of such annual statement at their office, and sell the same to any applicant at a price not exceeding one shilling for each such copy.

The Board of Trade, with the consent of the undertakers, may alter the said forms for the purpose of adapting them to the circumstances of the undertaking, or of better carrying into effect the objects of this section.

In case the undertakers make default in complying with the provisions of this section they shall be liable to a penalty not exceeding forty shillings for each day during which such default continues.

Section 38 of the Act of 1847, *ante*, p. 213, requires a copy of the account to be transmitted to the clerk of the peace in England or Ireland or to the sheriff clerk in Scotland.

See *The Dudley Gas Works Co.* v. *Warmington* (1881), 50 L. J. M. C. 69, cited *ante*, p. 221. The Leamington Priors Gas Company's Act, 1865 (which incorporated the Gasworks Clauses Act, 1847, except so far as it might be varied by any provision of the special Act), prescribes by s. 32 a special form in accordance with which the annual accounts of the company were to be made up, in lieu of provisions as to accounts contained in s. 38 of the Act of 1847. By s. 49 of the Act of 1847, undertakers are not to be exempted from any general Act relating to gasworks which may be passed in any future session. By s. 1 of the Gasworks Clauses Act, 1871, that Act and the Act of 1847 are to be construed as one Act, and by s. 35 in the text the undertakers are to make an annual statement of accounts in the form prescribed by that Act, and to furnish copies of the same to any applicant. The appellants made out their annual statement of accounts in the form prescribed by s. 32 of their special Act, and did not furnish to the respondent, on application, a copy of an annual statement of their accounts made out in the form prescribed by the Act of 1871:—*Held* (distinguishing *Dudley Gas Works Co.* v. *Warmington*), that, as the appellant's special Act prescribed the form in which the annual statement of accounts was to be made up, the provisions relating to the form of accounts in s. 35 of the Gasworks Clauses Act, 1871, did not apply (*Leamington Priors Gas Co.* v. *Davis* (1886), 18 Q. B. D. 107).

In provisional orders for gas supply in favour of urban sanitary authorities under the Gas and Water Works Facilities Acts, this section in regard to accounts is not incorporated, nor is Schedule B. containing forms of annual accounts. Special provisions are substituted which will be found in the notes to those Acts.

The instances in which the Board of Trade have altered the form of accounts under the powers of this section are recorded from time to time in the annual Statutory Rules and Orders. They have not been included in the General Index, published 1900, "on account of their local character" (p. 292).

As to the appointment of auditors, *cf.* the provisions of s. 101 of the C. C. C. Act, 1845.

When both gas and water undertakings are in the hands of the same undertakers there is usually to be found in their special Acts an enactment requiring separate accounts to be kept. For an exception see Rhymney and Aber Valleys Gas and Water Act, 1905, s. 8. A similar enactment is generally to be found when gas and electric supply undertakings are in the same hands. See, *e.g.*, Andover Lighting and Power Act, 1905, s. 77, and Shepton Mallet Gas Co. (Electric Lighting) Act, 1905, s. 32.

PENALTIES.

Penalty for failure to supply gas.

36. Whenever the undertakers neglect or refuse to give a supply of gas to any owner or occupier of premises within the limits of the special Act entitled to the same, under such pressure as is prescribed, they shall be liable to a penalty not exceeding forty shillings for each day during which such default continues.

Whenever the undertakers neglect or refuse to supply gas as by this Act required to all or any of the public lamps in accordance with the provisions of this Act, they shall be liable to a penalty not exceeding forty shillings for each default.

If it shall be proved to the satisfaction of any two justices, not being shareholders in the undertaking, after hearing the parties, that on any day the gas supplied by the undertakers is under less pressure of less illuminating power, or of less purity than it ought to be according to the provisions of this or the special Act, the undertakers shall in every such case forfeit and pay to the local authority or other persons making application for testing the gas such sum not exceeding twenty pounds as the justices shall determine.

Penalties not cumulative.

Penalties imposed on the undertakers for one and the same offence by several Acts of Parliament shall not be cumulative, and for such purpose the special Act and the Acts incorporated therewith shall be deemed several Acts.

The penalties provided for by this section may be recovered not only where there is a neglect or refusal to supply gas under such pressure as is prescribed, but also where there is a neglect or refusal to supply gas at all; and consequently the section applies in a case where the gas company have improperly cut off the supply of gas (*Commercial Gas Co.* v. *Scott* (1875), L. R. 10 Q. B. 400).

Where a case has been stated on a conviction under this section there is no right of appeal from the decision of the Divisional Court, for it is a decision in a "criminal cause or matter" (*Southport* (*Mayor, etc. of*) v. *Birkdale U. D. C.* (1897), 76 L. T. 318).

There is no provision in the general Gas Acts, 1847 and 1871, excusing default if due to unavoidable cause or accident, such as is found in the

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Waterworks Clauses Act, 1847, ss. 36, 42, and the Waterworks Clauses Act, 1863, s. 13. Some special Gas Acts of local authorities and also of companies contain a clause excusing default for neglect or refusal to supply gas or for insufficiency of pressure, defect of illuminating power or excess of impurity when caused by circumstances beyond the control of the local authority. See, *e.g.*, Doncaster Corporation Act, 1904, s. 51. Sometimes the words "or was of so slight or unimportant a character as not materially to affect the value of the supply" are added to the clause, *e.g.*, Rotherham Corporation Act, 1904, s. 20. See p. 48.

No person will be entitled to a supply of gas who neglects or refuses to pay the gas and meter rent due.

It will be observed that the section speaks of "such pressure as is prescribed." This Act of 1871 does not itself prescribe the pressure, and unless the special Act does so there is no obligation on a gas company as to the pressure to be maintained by them. In recent gas Acts pressure is always provided for, viz., "such pressure as to balance a column of water not less than eight-tenths of one inch in height at the main or as near as may be to the junction therewith of the service pipe supplying the consumer." See Model Gas Bill, cl. 26.

In the special Acts relating to the metropolis, pressure is prescribed. The corresponding heights are six-tenths of an inch from midnight to sunset, and one inch from sunset to midnight. See s. 71 of the Commercial Gas Act, 1875; s. 26 of the Gaslight and Coke Company Act, 1876; and s. 27 of the South Metropolitan Gas Act, 1876.

Sect. 21 of the Brentford Gas Act, 1868, enacts that all the gas supplied by the appellant company shall be of such quality as to produce from an Argand burner having fifteen holes and a seven-inch chimney, and consuming five cubic feet of gas per hour, a light equal in intensity to the light produced by fourteen sperm candles of six in the pound, each burning 120 grains per hour. The respondents, the local authority, under their statutory powers, appointed a gas examiner to test the gas supplied by the appellants. The result of the gas examiner's test showed that the illuminating quality of the appellants' gas was equivalent to 11·24 candles. For the purpose of the test the gas examiner used an Argand burner having fifteen holes and a seven-inch chimney, and consuming five cubic feet of gas per hour, of a character and pattern invented by a Dr. Letheby previously to 1868, and known as a Letheby-Sugg burner. Such pattern of burner was, at the passing of the Brentford Gas Act, 1868, the best burner at that time known for testing the illuminating power of gas, but since that date considerable improvements have been made in such burner. The appellants were summoned for supplying gas of illuminating quality inferior to that required by s. 21 of the above Act; it was held that the appellants were not liable to be convicted upon the result of the test made with the pattern of Argand burner used by the gas examiner (*Brentford Gas Co.* v. *Chiswick U. D. C.* (1908), 72 J. P. 378).

A gas company was summoned under the above section for not supplying gas to a public lamp. The company could not supply the lamp without laying a communication along a private passage, which, by s. 7 of the Act of 1847, they had no power to do. The magistrate declined to convict and a Divisional Court upheld his decision (*Bellamy* v. *Liverpool United Gaslight Co.* (1904), 68 J. P. 540). The court intimated that the appellants (the corporation) should have proceeded against the owners or occupiers of the premises adjoining the passage requiring them to provide proper means of lighting under s. 150 of the Public Health Act, 1875. See, further, as to "public lamps," *Liverpool United Gaslight Co.* v. *Liverpool Corporation*, Jl. of G. L., 1910, Vol. 110, pp. 251, 383.

The provisions of s. 29 of the Electric Lighting Act, 1882, ought to be here referred to. It provides as follows:

> "29. Where a supply of electricity is authorised in an area by any license, order, or special act, and a supply of gas by any gas undertakers is also authorised within such area or any part thereof by any

> provisional order or special act under the provisions of which such gas undertakers are under any general or limited obligation to supply gas upon demand, the board of trade may, upon the application of such gas undertakers, inquire into the circumstances of the case, and if they are satisfied that any specified part of such area is sufficiently supplied with electric light, and that the supply of gas in such specified part has ceased to be remunerative to the gas undertakers, and that it is just that such gas undertakers should be relieved from the obligation to supply gas upon demand as aforesaid, the board of trade may in their discretion make an order relieving the gas undertakers from such obligation, within such specified part of such area, either wholly or in part, and upon such terms and conditions as they may think proper; and from and after the date of such order such gas undertakers shall be so relieved accordingly. All expenses of the board of trade in connection with any such inquiry or order shall be borne and paid by the gas undertakers upon whose application the inquiry or order was made."

Effect of penalty clause on right of action.

Where a gas company become liable to penalties for neglect or refusal, it follows that no action will lie for damages, and that the penalties form the only remedy. This is the result of the decision in *Atkinson* v. *Newcastle Waterworks Co.* (1877), 2 Ex. D. 441. The earlier case of *Couch* v. *Steel* (1854), 3 E. & B. 402, had decided (1) that if a statutory duty is enforceable by a penalty which can be recovered by the party aggrieved by the non-performance, there is no other remedy than that given by the Act either for the public or the private wrong, and (2) that where the penalty is not recoverable by the person aggrieved, but is recoverable by someone else, as, for example, by a common informer or a public authority, then the person aggrieved may maintain an action. The judges in the case of *Atkinson* v. *Newcastle Waterworks Co.*, while approving of the first of these propositions, disapproved of the second, and held that even where the penalty is not recoverable by the person aggrieved, he cannot maintain an action for damages. Lord CAIRNS added that the question is one that must depend to a great extent "on the purview of the legislature in the particular statute"; and this view has been recognised in later cases, as by the Privy Council in *Bathurst (Borough of)* v. *Macpherson* (1879), 4 App. Cas., at p. 268. See also *Great Northern Fishing Co.* v. *Edgehill* (1883), 11 Q. B. D. 225; *Stevens* v. *Jeacocke* (1848), 11 Q. B. 731; *Vallance* v. *Falle* (1884), 13 Q. B. D. 109; *Denaby Main Colliery Co.* v. *M. S. & L. Rail. Co.* (1885), 11 App. Cas. 97; 14 Q. B. D. 221; *Melliss* v. *Shirley L. B.* (1885), 14 Q. B. D. 911; *R.* v. *Hall*, [1891] 1 Q. B. 747. *Cf. Gale* v. *Rhymney and Aber Valleys Gas and Water Co.* (1903), cited *post*, p. 498, and *Morris and Bastert, Ltd.* v. *Loughborough Corporation*, [1908] 1 K. B. 205.

The same point was again raised in *Clegg, Parkinson & Co.* v. *Earby Gas Co.*, [1896] 1 Q. B. 592. This was an action claiming damages in respect of the alleged insufficiency and impurity of the gas supplied, the plaintiffs relying upon ss. 11, 12 of the Act of 1871. On appeal from the county court (where the judge held that the action was not maintainable) the Divisional Court held that where a general obligation is created by statute, and the same statute prescribes a specific remedy, that is the only remedy, and therefore that the action was not maintainable. *Cf.* the judgment in *Simpson* v. *South Oxfordshire Water and Gas Co.*, cited in the notes to s. 43, of the Waterworks Clauses Act, 1847, *post*, p. 489, and *Morris and Bastert, Ltd.* v. *Loughborough Corporation*, *supra*.

Circumstances in which an action may be maintainable.

Where a gas company failed to properly reinstate a public road after laying a pipe and the plaintiff thereby sustained damage, Lord RUSSELL OF KILLOWEN, L.C.J., held that the action would lie because there had been more than mere breach of duty, the jury having found nuisance, and because of s. 29 of the Act of 1847, and s. 9 of the Act of 1871 (*Goodson* v. *Sunbury Consumers Gas Co.* (1896), 75 L. T. 251). In *Hartley* v. *Rochdale (Mayor, etc. of)*, [1908] 2 K. B. 594, it was held that the mere passive omission by a road authority to rectify a subsidence in a road in their area, which had been originally occasioned by the neglect of a water company to make good the

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road after having broken it up for the purposes of their undertaking, did not exonerate the water company from liability for an injury caused to a person using the road by reason of the subsidence. Where it was alleged that a municipal corporation supplied soft water which acted upon lead pipes, and which it was contended was not pure and wholesome within s. 35 of the Waterworks Clauses Act, 1847, and the plaintiff brought an action for damages, the majority of the House of Lords held that the obligation of s. 35 was fulfilled when pure and wholesome water was put into the mains, but Lords SELBORNE and WATSON held that the undertakers were liable, on the ground that the water contained some special and peculiar solvent of lead, which made it poisonous after passing through the leaden pipes, although it would have been harmless if it could have been drunk direct from the mains (*Milnes* v. *Huddersfield Corporation* (1886), 11 App. Cas. 511). In this case the point was taken that on the facts alleged the undertakers were liable to penalties, but not to an action. The decision, however, was given on the merits and not on this preliminary point. *Cf.* the judgment in *Simpson* v. *South Oxfordshire Water and Gas Co.*, cited in the notes to s. 43 of the Waterworks Clauses Act, 1847, *post*, p. 489.

See also *Crystal Palace Gas Co.* v. *Idris*, cited, *ante*, p. 191.

By the Tendring Hundred Waterworks Act, 1884, it was provided that: "Water supplied by the company need not be constantly laid on under pressure, but the Local Government Board may at any time or times after the expiration of five years from the passing of this Act order that the water supplied within the whole or any part of the company's water limits shall be constantly laid on under pressure, and the company shall be bound by such order as if the same were herein enacted. . . ." The limits of the Act embraced various districts including the borough of Harwich. The corporation of that borough, after the lapse of five years, complained to the Local Government Board of deficiency in the supply afforded them, and that board made an order on the company in 1892 to provide a supply of water constantly laid on under pressure within the limits of the borough of Harwich. In 1900 the corporation, complaining of default, applied for *mandamus* to compel the company to obey the order of the Local Government Board. The defendants contended that *mandamus* would not lie as the company were liable to penalties. For the corporation it was contended that there was no complete remedy provided by the Act, and that the remedy of penalties was not "equally convenient, beneficial, and appropriate." The court made absolute the rule for *mandamus* (*R.* v. *Tendring Hundred Waterworks Co.*, Jl. of G. L., August 14th, 1900, p. 417).

Where by an Act extending the powers of a Toronto Gas Company certain duties and obligations were imposed on it for the benefit of its consumers, with a view to the reduction of the price of gas contingent on the amount of surplus net profit, but no pecuniary penalty was imposed for default, and no right of action given to persons aggrieved, provision being made, however, for its accounts being audited by direction of the mayor of the corporation, with whose consent the company was originally established:—*Held*, that no individual customer had a right of action against the company for non-compliance with the provisions of the Act. Such a right only arises where given by the Act, and especially so where the Act, as in this case, is in the nature of a private legislative bargain, and not one of public and general policy (*Johnston* v. *Toronto Consumers Gas Co.*, [1898] A. C. 447).

Where a statute gives a right to recover expenses in a court of summary jurisdiction from a person who is not otherwise liable, there is no right to come to the High Court for a declaration that the applicant has a right to recover the expenses in a court of summary jurisdiction. He can only take proceedings in the latter court. The construction of s. 56 of the Harbours, Docks, and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), adopted in *The Crystal*, [1894] A. C. 508, applied to s. 47 of the Aire and Calder Navigation Act, 1889 (52 & 53 Vict. c. lxxxii.) (*Barraclough* v. *Brown*, [1897] A. C. 615).

Action for *mandamus* will not lie against a local authority to construct sewers, the remedy for neglect being by complaint to the Local Government

Board (s. 299 of the Public Health Act, 1875) (*Peebles* v. *Oswaldtwistle U. D. C.*, [1897] 1 Q. B. 625, affirmed H. L. *sub nom. Pasmore* v. *Oswaldtwistle U. D. C.*, [1898] A. C. 386). See also on the same point *Robinson* v. *Workington Corporation*, [1897] 1 Q. B. 619.

Sect. 36.

Note.

Costs of experiment to be paid according to event.

37. Where the gas examiner is appointed by the justices as aforesaid, the costs of and attending such experiment, including the remuneration to be paid to the persons making the same, and the costs of the proceedings before the justices, shall be ascertained by such justices, and in the event of any penalty being imposed on the undertakers shall be paid, together with such penalty, by the undertakers, but in the event of no penalty being imposed the costs shall be in the discretion of the justices.

Penalty for injuring meters.

38. Every person who wilfully, fraudulently, or by culpable negligence injures or suffers to be injured any pipes, meter, or fittings belonging to the undertakers, or alters the index to any meter, or prevents any meter from duly registering the quantity of gas supplied, or fraudulently abstracts, consumes, or uses gas of the undertakers, shall (without prejudice to any other right or remedy for the protection of the undertakers or the punishment of the offender) for every such offence forfeit and pay to the undertakers a sum not exceeding five pounds, and the undertakers may in addition thereto recover the amount of any damage by them sustained; and in any case in which any person has wilfully or fraudulently injured or suffered to be injured any pipes, meter, or fittings belonging to the undertakers, or altered the index to any meter, or prevented any meter from duly registering the quantity of gas supplied, the undertakers may also, until the matter complained of has been remedied, but no longer, discontinue the supply of gas to the person so offending (notwithstanding any contract previously existing); and the existence of artificial means for causing such alteration or prevention, or for abstracting, consuming, or using gas of undertakers, when such meter is under the custody or control of the consumer, shall be primâ facie evidence that such alteration, prevention, abstraction, or consumption, as the case may be, has been fraudulently, knowingly, and wilfully caused by the consumer using such meter.

Recovery of Gas Rents.

Incoming tenants not liable to pay arrears of gas rents, etc.

39. In case any consumer of gas supplied by the undertakers leaves the premises where such gas has been supplied to him, without paying the gas rent or meter rent due from him, the undertakers shall not be entitled to require from the next tenant of such premises the payment of the arrears left unpaid by the former tenant, unless such incoming tenant has undertaken with the former tenant to pay or exonerate him from the payment of such arrears.

Companies have power to require security. See s. 11, *ante*, p. 223.

The cases relevant to the construction of this section have already been fully noticed in the note under s. 11 *ante*, p. 223

Sect. 39.

NOTE.

In recent Gas Acts a clause providing for notice of removal by an outgoing tenant is generally inserted. The following are taken from the Bristol Gas Act, 1899 (62 & 63 Vict. c. clxxix.):

Notice of removal.

Gas consumers to give notice to company before removing.

> "20. Twenty-four hours notice in writing shall be given to the company by every gas consumer before he shall quit any premises supplied with gas by the company, and in default of such notice the consumer so quitting shall be liable to pay to the company the money accruing due in respect of such supply until the expiration of twenty-four hours after he shall have given to the company notice that he has quitted such premises: Provided that such liability shall in no case continue beyond the next usual period for ascertaining the register of the meter on such premises or the date from which any subsequent occupier of such premises shall require the company to supply gas to such premises whichever shall first occur. Notice of the effect of this enactment shall be endorsed on every demand note for gas rent.

Notice to discontinue supply of gas.

> "21. A notice to the company from a consumer for the discontinuance of a supply of gas shall not be of any effect unless it be in writing signed by or on behalf of the consumer, and be left at or sent by post to the office for the time being of the company."

See clauses 31 & 33 of the Model Gas Bill, *post*, pp. 369, 370.

Recovery of rents, etc.

40. If any person supplied with gas or with any gas meter or fittings by the undertakers neglects to pay to the undertakers the rent due for such gas or the rent or money due to the undertakers for the hire or fixing of such meter, or any expenses lawfully incurred by the undertakers in cutting off the gas from the premises of such person, the undertakers may recover the sum so due in like manner as a penalty under this Act.

See also as to recovery of gas charges s. 23, *ante*, p. 235, and the note under s. 11, *ante*, p. 223.

As to the recovery of penalties see s. 44, *post*, p. 247, and s. 40 of the Gas Works Clauses Act, 1847, *ante*, p. 214.

Distress for rent was held not to be an "execution or legal process" within the meaning of s. 13 of the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71) (see now s. 10 of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), and, therefore, where a gas company, who by their special Act were authorised to recover rent and charges due to them for gas "by the same means as landlords are by law empowered to recover rent in arrear," after notice of the filing of a petition for liquidation by arrangement distrained upon the goods of the petitioning debtors for a sum due for gas supplied, and the county court judge granted an injunction under the Act of 1869 restraining further proceedings in the distress, it was held by the chief judge that the injunction had been improperly granted, and that the distress was good against the trustee under the liquidation (*Ex parte Birmingham and Staffordshire Gaslight Co., In re Fanshaw* (1871), L. R. 11 Eq. 615; and see *Ex parte Birmingham Gaslight and Coke Co., In re Adams* (1870), L. R. 11 Eq. 204). In a subsequent case, the Coventry Gas Company had a section in their special Act of 1856, which authorised them to levy all sums due for gas by distress (the words "by the same means as landlords may recover rent in arrear," which occur in the *Birmingham Case, supra*, being absent from the section). The company, after one of their customers had filed a liquidation petition, and with notice of the petition, proceeded to seize his goods under a distress warrant. It was held that the company did not come within the words "landlord or other person to whom any rent is due from the bankrupt" in s. 34 of the Bankruptcy Act, 1869, and the company were restrained from enforcing the distress (*Ex parte Hill, In re Roberts* (1877), 6 Ch. D. 63). In the judgment, BAGGALLAY, L.J., distinguished this from *Ex parte Birmingham and Staffordshire Gaslight Co.*, because of the absence of the words "by the same means

NOTE.

as landlords are by law empowered to recover rent in arrear." The Corporation of Walsall were, by their special Act (39 & 40 Vict. c. cxix.), s. 44, empowered to "recover from any person any rent or charge due to them by him for gas supplied, by the like means as landlords are for the time being by law allowed to recover rent in arrear":—*Held*, by the Court of Appeal, after reviewing the two last-mentioned cases—(1) that, after the filing of a liquidation petition by a customer, the corporation were entitled, as against the trustee in the liquidation, to levy a distress in respect of a sum due by the debtor for gas supplied to him before the filing of the petition:—*Held*, (2) that the corporation were not, within the meaning of s. 34 of the Bankruptcy Act, 1869, "other persons" to whom any rent was due by the debtor, but that, by virtue of s. 44 of the special Act, they were entitled to the rights given to landlords by s. 34; and *Held* (3) that the payment due to a gas company for gas supplied, though it is called "rent" in some Acts of Parliament, is not really of the nature of rent, and consequently a gas company does not come within the words, "other person to whom any rent is due," in s. 34 of the Bankruptcy Act, 1869. Those words only apply to a person who, though he is not the landlord of the bankrupt, fills a position analogous to that of the landlord, because he is entitled to receive that which is "rent" strictly so called (*Ex parte Harrison, In re Peake* (1884), 13 Q. B. D. 753). See also *In re Smith, Ex parte Mason* (cited *ante*, p. 226, s. 42 of the Bankruptcy Act, 1883, and s. 28 of the Bankruptcy Act, 1890).

Recovery of sums due to undertakers.

41. Whenever any person neglects to pay any rent or sum due and payable by him to the undertakers, the undertakers may recover the same with full costs of suit, in any court of competent jurisdiction, and the remedy of the undertakers under this enactment shall be in addition to their other remedies for the recovery of such rent or sum.

See note to s. 16 of the Act of 1847, *ante*, p. 188.

Many modern Acts contain the following provision, which is now numbered 25 in the Miscellaneous clauses in the Model Bill:—"Proceedings for the recovery of any demand made under the authority of this Act [or the former Acts] or any incorporated enactment whether provision is or is not made for the recovery in any specified court or manner may be taken in any county court having otherwise jurisdiction in the matter provided that the demand does not exceed the amount recoverable in that court in a personal action."

In connection herewith it should be noticed that the jurisdiction of the county court has now been extended to £100 (see County Courts Act, 1903 (3 Edw. 7, c. 42), s. 3).

LEGAL PROCEEDINGS.

Contents of summons or warrant.

42. Any summons or warrant issued for any of the purposes of this Act may contain, in the body thereof or in a schedule thereto, several names and several sums.

Warrant of distress shall include costs.

43. Any justice who issues a warrant of distress in pursuance of the provisions of this Act may order that the costs of the proceedings for the recovery of the money to be levied shall be paid by the person liable to pay such money, and such costs shall be ascertained by the justice, and shall be included in the warrant of distress for the recovery of such money.

Summary proceedings

44. All offences and penalties under this Act, and all money forfeited, and all money and costs by this Act directed to be recovered as penalties,

Sect. 44.

for offences, penalties, etc.

may be prosecuted and recovered in manner directed by the Gasworks Clauses Act, 1847, with respect to the recovery of penalties.

See *ante*, pp. 214 *et seq.*

The Model Gas Bill (Miscellaneous Clauses) contains the following clause as to " Recovery of Penalties " : " Save as otherwise by this Act expressly provided all offences against this Act and all penalties forfeitures costs and expenses imposed or recoverable under this Act or any byelaw made in pursuance thereof may be prosecuted and recovered in a summary manner. Provided that costs or expenses except such as are recoverable along with a penalty shall not be recovered as penalties but may be recovered summarily as civil debts."

Service of notices by undertakers.

45. Every notice which the undertakers are by this Act required to serve upon any person shall be served by being delivered to the person for whom it is intended, or by being left at his usual or last known place of abode, or sent by post addressed to such persons, or if such person or his address be not known to the undertakers, and cannot after due inquiry be found or ascertained, then by being affixed for three days to some conspicuous part of the premises to which such notice relates.

Liability to gas rent, not to disqualify justices from acting.

46. No justice or judge of any county court or quarter sessions shall be disqualified from acting in the execution of this Act by reason of his being liable to the payment of any gas rent or other charge under this Act.

SCHEDULE A.*

PART I.

Regulations in respect of Testing Apparatus.

1. *The apparatus for testing the illuminating power of the gas* shall consist of the improved form of Bunsen's photometer, known as Letheby's open 60-inch photometer, or Evans' enclosed 100-inch photometer, together with a proper meter, minute clock, governor, pressure-gauge, and balance.

The burner to be used for testing the gas shall be such as shall be prescribed.

The candles used for testing the gas shall be sperm candles of six to the pound, and two candles shall be used together.

2. *The apparatus—*

(*a*) *For testing the presence in the gas of sulphuretted hydrogen.*—A glass vessel containing a strip of bibulous paper moistened with a solution of acetate of lead, containing sixty grains of crystallized acetate of lead dissolved in one fluid ounce of water.

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* As regards the metropolis, it must be kept in view that special provisions on the subject of this schedule are contained in the Metropolis Gas Act, 1860, and in the special Acts of 1875, 1876, 1880, and 1900, and in the London Gas Act, 1905. As regards provisional orders under the Gas and Water Works Facilities Acts, see note to s. 29 of the Act of 1871, *ante*, p. 238.

SCHEDULE A.

Part II.

Rules as to Mode of Testing Gas.

I.—*Mode of Testing for Illuminating Power.*

The gas in the photometer is to be lighted at least fifteen minutes before the testings begin, and it is to be kept continuously burning from the beginning to the end of the tests.

Each testing shall include ten observations of the photometer, made at intervals of a minute.

The consumption of the gas is to be carefully adjusted to five cubic feet per hour.

The candles are to be lighted at least ten minutes before beginning each testing, so as to arrive at their normal rate of burning, which is shown when the wick is slightly bent and the tip glowing. The standard rate of consumption for the candles shall be 120 grains each per hour. Before and after making each set of ten observations of the photometer the gas examiner shall weigh the candles, and if the combustion shall have been more or less per candle than 120 grains per hour, he shall make and record the calculations requisite to neutralize the effects of this difference.

The average of each set of ten observations is to be taken as representing the illuminating power of that testing.*

II.—*Mode of Testing.*

(*a*) *For sulphuretted hydrogen.*—The gas shall be passed through the glass vessel containing the strip of bibulous paper moistened with the solution of the acetate of lead for a period of three minutes, or such longer period as may be prescribed; and if any discoloration of the test paper is found to have taken place this is to be held conclusive as to the presence of sulphuretted hydrogen in the gas.

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* Under the special Gas Acts relating to the metropolis, and the notifications of the gas referees made thereunder, provision is made for correcting the readings for variations in barometrical pressure and temperature. No such provisions are made in the Act of 1871.

In *Walthamstow L. B.* v. *Lea Bridge District Gas Co.*, Jl. of G. L., January 24th, 1893, vol. 61, p. 144, it was contended on behalf of the gas company that the words "each testing shall include ten observations of the photometer made, etc." coupled with these words "the gas in the photometer is to be lighted at least fifteen minutes before the testings begin . . . from the beginning to the end of the *tests*," show that one testing of ten observations is insufficient to support a conviction, and that the words "the average of each set of ten observations" show that it was intended that there should be several testings of ten observations, and that the average of those should be taken. Mr. William Sugg gave evidence that "there should be at least three tests." In the result, the magistrates refused to convict on the summons applicable to that particular test.

Sched. B.

SCHEDULE B.

Form of Annual Accounts.

The Gas Company.

Year ended 31st December, 18 .

A —STATEMENT OF SHARE CAPITAL, on the 31st December, 18 .

1. Description of Capital.	2. Maximum Dividend authorised.	3. Number of Shares issued.	4. Nominal Amount of Share.	5. Called up per Share.	6. Total paid up.	7. Amount issued but not paid up.	8. Remaining to be issued.	9. Total Amounts. authorised.

B.—STATEMENT OF LOAN CAPITAL, on the 31st December, 18 .

1. Description of Loan (Mortgage), Bond, Debenture Stock, etc.).	2. Rate per Cent. of Interest.	3. Total Amounts borrowed at 31st December, 18 .	4. Remaining to be borrowed.	5. Total Amounts authorised.

Total Share Capital paid up (see A.) ... ... £
Do. Loan do. borrowed (see B.) ... ... £

Total Capital received ... ... £

Messrs. Wood, Drew & Co., of 6 and 7, Queen Street, Cheapside, E.C., have kindly supplied the editor with the following note to Forms **A.** and B., *supra* :—"The particulars of Share and Loan Capital should be preceded by the title of the Act of Parliament (or Order) authorising the capital. In the case of capital bearing a Standard Dividend subject to a sliding scale, particulars of such sliding scale should be inserted immediately following Form A."

Sched. B.

C.—CAPITAL ACCOUNT, for the year ended 31st December, 18 .

—	Expenditure to 31st December, 18 .	Expended this Year.	Total to 31st December, 18 .	—	Certified Receipts, 31st December, 18 .	Received during Year.	Total Receipts to 31st December, 18 .
	£ s. d.	£ s. d.	£ s. d.		£ s. d.	£ s. d.	£ s. d.
1. To expenditure to 31st December, 18				1. By ordinary shares of £ each ...			
Since that Date.				2. ,, ditto of £ each			
2. To lands acquired, including law charges				3. ,, preference shares of £ each ...			
3. ,, new buildings, manufacturing plant, machines, storage, works, and other structures connected with manufacture				4. ,, debenture stock			
4. ,, new mains and service pipes (not being in place of old ones), including laying same, paving, and other works connected with distribution				5. ,, mortgages and bonds			
5. ,, new meters (not in place of old ones), including fixing				6. ,, amount received in anticipation of calls			
6. ,, costs of promoting special Act ...							
7. ,, special items (if any)							
Total expenditure				Total ... ... £			
To balance of capital account							
£							

Messrs. Wood, Drew & Co. have kindly supplied the editor with the following note to the above Form:—"It is usual to include stoves as an additional heading of expenditure following that of meters (item 5). Premiums received on the issue of capital should form an additional heading on the receipts side."

Sched. B.

D.—REVENUE ACCOUNT, for the Year ended 31st December, 18 .

	£ s. d.	£ s. d.		£ s. d.	£ s. d.
TO MANUFACTURE OF GAS.			BY SALE OF GAS.		
1. Coals, including dues, carriage, unloading, and all expenses of depositing same on works			1. Common gas (cubic feet), at / per 1,000 cubic feet		
2. Purifying materials, oil, water, and sundries at works			2. Cannel gas (cubic feet), at / per 1,000 cubic feet		
3. Salaries of engineers, including chief engineer (if any), superintendents, and officers at works			3. Public lighting and under contracts		
4. Wages and gratuities at works					
5. Repairs and maintenance of works and plant (including renewal of retorts), machines, apparatus, tools, materials, and labour ... ... £			4. Rental of meters		
Less old materials sold ... ... £					
TO DISTRIBUTION OF GAS.					
6. Salaries of surveyor, chief inspector, inspectors, assistant inspectors, and clerks in light office			BY RESIDUAL PRODUCTS.		
7. Repair, maintenance, and renewal of mains, and of service pipes, including materials, laying and paving, and labour			5. Coke, less labour and cartage ...		
			6. Breeze ,, ,, ...		
			7. Tar ,, ,, ...		
8. Repairing, renewing, and refixing meters			8. Ammoniacal liquor ,, ...		
TO PUBLIC LAMPS.					
9. Lighting and repairing					
TO RENTS, RATES, AND TAXES.					
10. Rents			9. By rents		
11. Rates and Taxes			10. By transfer fees		
TO MANAGEMENT.			By other items (if any)		
12. Directors' allowances					
13. Salaries of secretary, accountant, and clerks, office keepers, and messengers					
14. Collectors' commission or salaries					
15. Stationery and printing					
16. General establishment charges and incidentals...					
17. Auditor					
TO LAW AND PARLIAMENTARY CHARGES.					
18. Law					
19. Parliamentary (oppositions)					
20. To depreciation fund for works on leasehold lands (if any)					
21. To bad debts...					
To other items (if any)					
Total expenditure					
Balance carried to profit and loss account, E. ... ... £			Total receipts ... ... £		

Messrs. Wood, Drew & Co. have kindly supplied the editor with the following note to the above Form:—"Additional headings on the expenditure side are frequently required for (a) oil for carburetted water gas; (b) coke and breeze for carburetted water gas; (c) repair and renewal of stoves; (d) fittings. Also it is customary to charge under item (2) purifying materials and labour only, carrying oil and sundries to repair and maintenance of works (item 5). On the receipts side the heading of public lighting and under contracts (item 3) should be confined to the charges for street lamps and other charges of a similar nature. Under item 8 sulphate of ammonia frequently takes the place of ammoniacal liquor."

Sched. B.

Dr. E.—PROFIT AND LOSS ACCOUNT (NET REVENUE), for the Year ended 31st December, 18 . *Cr.*

	£ s. d.		£ s. d.
1. To amount carried to Reserve Fund Account, F. (if any), from profits of 18—		1. By balance of net profit brought from last account (31st December, 18—)	
2. ,, Interest on temporary loans, and moneys received in anticipation of calls		2. ,, Amount drawn from reserved fund (if any) ... Less dividend paid for the half-year ended 31st December, 18—	
3. ,, Ditto on mortgages and bonds accrued to 31st December, 18—		3. Balance brought from Revenue Account, D., being profit for year to December, 18—	
4. ,, Ditto on debenture stock to ditto		4. Interest on moneys deposited	
5. ,, Half-year's dividend on 1st preferential to 30th June, 18—			
6. ,, Ditto, 2nd preferential to ditto			
7. ,, Ditto on ordinary shares at per cent.			
,, Balance of net profit to be carried to next account subject to half-year's dividends to 31st December, 18—			
£		£	

F.—RESERVED FUND ACCOUNT, for the Year ended 31st December, 18 .

	£ s. d.		£ s. d.
1. Amount (if any) carried to Profit and Loss Account (E. to make up deficiencies of Dividends to 31st December, 18—		1. By balance brought from last account	
2. Amount paid for extraordinary claim or demand (if any) ...		2. By balance brought from Profit and Loss Account (E.) ...	
3. Amount of balance to be carried to next account		3. By interest on amount invested	
£		£	

Like accounts must be given for depreciation fund for works on leaseholds, if any.

Messrs. Wood, Drew & Co. have kindly supplied the editor with the following notes to the above Forms:—

"Form E.—An additional heading is required for income tax, which should not be included under rates and taxes in the revenue account."

"Form F.—It is desirable that particulars of the investments of the reserved fund, or of any other fund, should be set out either here or in the balance sheet."

Sched. B.

G.—STATEMENT OF COALS, during the Year ended 31st December, 18 .

Description of Coal.	In Store, 31st December, 18 .	Received during Year.	Carbonised or used during Year.	In Store, 31st December, 18 .
	Tons.	Tons.	Tons.	Tons.
Common				
Cannel				

H.—STATEMENT OF RESIDUAL PRODUCTS, for the Year ended 31st December, 18 .

Description of Residual.	In Store, 31st December, 18 . Estimated.	Made during Year. Estimated.	Used in Manufacture during Year. Estimated.	Sold during Year.	In Store, 31st December, 18 . Estimated.
Coke—common, chaldrons of 36 bushels ...					
,, cannel ,, ,, ...					
Breeze ... ,, ,, ...					
Tar, gallons					
Ammoniacal, liquor, butts of 108 gallons ...					

Messrs. Wood, Drew & Co. have kindly supplied the editor with the following notes to the above Forms:—

"Form G.—Where carburetted water gas is made, similar particulars should be given in regard to oil as are given in regard to coal.'

"Form H.—Additional headings will frequently be required for oil-tar and sulphate of ammonia."

Sched. B.

I.—General Balance Sheet, on 31st December, 18

Dr. *Cr.*

	£	s.	d.		£	s.	d.
1. To Capital Account— Balance at credit thereof (Account C.)				1. By cash at bankers			
2. „ Profit and Loss Account— Balance at credit thereof (Account E.)				2. „ „ on deposit or at interest			
3. „ Reserve Fund— Balance at credit thereof (Account F.)				3. „ coals for stock on hand, 31st December, 18— ...			
*4. „ Depreciation Fund (for works on leasehold lands— Balance at credit thereof (Account)				4. „ coke and breeze „ „ „			
5. „ Unpaid dividends				5. „ tar and other products „ „ „			
6. „ Interest accrued and unpaid on mortgages, bonds, and debenture stock, and other loans, to 31st December, 18—				6. „ sundry stores „ „ „ „			
7. „ Sundry tradesmen and others, for amount due for coals, stores, etc., to 31st December, 18—				7. „ gas and meter rental; balance of this account due to the company on 31st December, 18 , less deposits and prepayments			
8. „ Wages and Contingencies— Amount due to 31st December, 18—				8. „ coke and other residual „ „ „			
„ Other items (if any)				9. „ sundry accounts ... „ „ „			
				„ special items (if any), including investments			
£				£			

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* The Act of 1871 and the accounts scheduled contemplate that the gasworks and all necessary plant shall be maintained out of revenue. Some attempts have been made by gas companies to depart from this rule, and to start a depreciation fund. See a leading article on this subject, Journal of Gas Lighting, 6th September, 1904, p. 649, and a leaderette at p. 720.

WORKING STATEMENT.

Gas undertakers, whether companies or local authorities, will find it desirable to make up each year a working statement. The following form contains all the latest improvements which experience has suggested, and for it the Editor is indebted to Messrs. Wood, Drew & Co., Chartered Accountants. See note at p. 258.

Form of Working Statement.

FORM.

——— GAS COMPANY.

WORKING STATEMENT for the Year ended 31st December, 19 .

	Cubic Feet.	Cubic Feet.	
Gas made—Coal gas			
Carburetted water gas ...			
	Cubic Feet.	Cubic Feet.	Per Cent. of Make.
Gas sold—Private at			
Public lighting			
Gas used on works and offices			
Gas unaccounted for			
			100·00

Capital expenditure—	£	
per million cubic feet of gas made		
per million cubic feet of gas sold		
per thousand cubic feet of gas sold		
Price of gas—Maximum or standard		per 1,000 cubic feet.
,, ,, Charged to consumers		,, ,,
Quality of gas—Prescribed illuminating power ...		candles.
,, ,, Illuminating power supplied		,,
Coal carbonized		tons.
Cost per ton		
Coal gas made per ton		cubic feet.
Oil used for carburetted water gas		gallons.
Cost per gallon		pence.
Used per thousand cubic feet of carburetted water gas made		gallons.
Cost of coal per thousand cubic feet of coal gas made		pence.
Cost of oil, coke and breeze per thousand cubic feet of carburetted water gas made		,,
Wages per thousand cubic feet of coal gas made ...		,,
Wages per thousand cubic feet of carburetted water gas made		,,
Coke made		tons.
per ton of coal carbonized		cwt.
Coke used for fuel in making coal gas		tons.
per cent. of make		
Breeze made		tons.
per ton of coal carbonized		cwt.
Coal tar made		gallons.
per ton of coal carbonized		,,
Oil tar made		,,
per 100 gallons of oil used		,,
Sulphate of ammonia made		tons.
per 100 tons of coal carbonized		cwt.
Realised in respect of coke		per ton.
,, ,, breeze		,,
,, ,, coal tar		per gallon.
,, ,, oil tar		,,
,, ,, sulphate		per ton.
Net proceeds of coke and other residuals per cent. on cost of coal and oil (including coke and breeze for manufacture of carburetted water gas)		per cent.

WORKING STATEMENT—*continued.*

Expenditure and Receipts as per Revenue Account.			Per 1,000 cubic feet of gas sold.	
	£ s. d.	*£ s. d.*	*pence.*	*pence.*
Coal				
Oil				
Coke and breeze for carburetted water gas				
Less Residuals—Coke				
Breeze				
Coal tar				
Oil tar				
Sulphate of ammonia...				
Total residuals ...				
Net for coal and oil				
Add working expenses—				
Purifying				
Salaries of engineers...				
Wages for manufacture of coal gas				
Wages for manufacture of carburetted water gas				
Repair, etc., of works and plant ...				
Salaries of inspectors and clerks ...				
Repair, etc., of mains and services ...				
Repair, etc., of meters				
Repair, etc., of stoves				
Fittings				
Public lamps				
Rents				
Rates and taxes				
Directors				
Secretary, accountant and clerks ...				
Collectors				
Stationery and printing				
General establishment charges ...				
Auditors				
Law charges				
Parliamentary oppositions				
Depreciation of leaseholds				
Bad debts				
Total working expenses				
Net coal and working expenses				
Sale of gas—Private at ...				
„ Public lighting ...				
Rental of meters				
Rental of stoves...				
Rental of fittings				
Rents				
Miscellaneous receipts				
Profit as per revenue account				
Interest and dividend charge				
Surplus or deficiency				

NOTE.—The above working statement is drawn for the use of companies, but can be adapted for the use of local authorities.

Uses of a working statement.

In a paper read by Mr. Alfred Lass, F.C.A., at Bristol, on June 13th, 1877, on the subject of the Form of Accounts prescribed by the Act of 1871, he pointed out that these accounts could be made the basis upon which an analytical working statement could be constructed, and he strongly advocated the use of such working statements, and gave a form prepared by him. As to the usefulness and advantages of such working statements, his words on that occasion may be quoted: "I am of opinion that the prescribed form of accounts meets the requirements of gas companies, because, after the preparation of a working statement similar to the above, the results of the working can be easily compared, not only with those of previous years, but with the working of the metropolitan and other gas companies, and the benefit arising therefrom to a manager who is desirous of becoming thoroughly efficient in his profession is incalculable, as it not only reveals to him the weak points, but enables him to guard against and rectify them in the future. And I am of opinion that the prescribed form of accounts meets the requirements of gas companies, because after a series of years the working statements become very valuable data not only for evidence, should it be necessary at any time to apply to Parliament for statutory powers, additional capital, or a maximum price, but also for the computation of the commercial value of the undertaking should the local authorities at any time deem it desirable, in the interest of the ratepayers to buy up the same."

For form of a working statement applicable to water undertakings, see *post.*

SALE OF GAS ACT, 1859.

(22 & 23 VICT. c. 66.*)

An Act for regulating Measures used in Sales of Gas.

[13th August, 1859.]

[*Preamble repealed by Statute Law Revision Act*, 1892 (55 & 56 *Vict. c.* 19.]

Interpretation of words "meter" and "person."

1. In construing this Act the word "meter" shall mean gas meter, and shall include every kind of machine used for measuring gas; and the word "person" shall include corporations.

Fixing unit of measure.

2. The only legal standard or unit of measure for the sale of gas by meter shall be the cubic foot containing 62·321 pounds avoirdupois weight of distilled or rain water weighed in air at the temperature of sixty-two degrees of Fahrenheit's thermometer, the barometer being at thirty inches.

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* By the Short Titles Act, 1896, this Act may be cited as "The Sale of Gas Act, 1859." This Act was saved by s. 66 of the Weights and Measures Act, 1878, and by the same Act, s. 33, the powers of the Treasury under this Act were transferred to the Board of Trade.

By the Metropolis Gas Act, 1861, *post*, it was provided that the powers conferred on justices of the peace under the above Act, as amended by the Sale of Gas Act, 1860, *post*, shall, in so far as relates to the metropolis, be transferred to and vested in the Metropolitan Board of Works. These powers are now vested in the London County Council under the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 40 (8). See further the notes to s. 4, *post*, p. 261.

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Portions of s. 2 repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19), are omitted.

Under the powers of this Act, an Order in Council, dated March 24th, 1871, was made whereby certain wet and dry gas meters were legalised, their measuring capacity being accurately determined in relation to the cubic foot, the unit of measure fixed by the above section. See Statutory Rules and Orders Revised, vol. 8, p. 122.

Models of measures to be made and verified under the direction of the Treasury. (*Board of Trade.*)

3. From time to time models of such multiples and decimal parts of the said cubic foot as the lord high treasurer or the said commissioners shall from time to time think expedient, shall be carefully made, with proper balances, indices, and apparatus, for testing the measurement and registration of meters; and such models shall be verified under the direction of the lord high treasurer or the said commissioners, and when so made and verified shall be deposited in the office of the comptroller-general of the exchequer at Westminster; and copies of the models so from time to time deposited, verified as aforesaid shall be sent to the Lord Mayor of London, and the chief magistrate of Edinburgh and Dublin, and to the chief magistrate of such other cities and boroughs, and to such other places and persons in Her Majesty's dominions as the said lord high treasurer or the aforesaid commissioners may from time to time direct; and the said lord high treasurer or the said commissioners shall appoint a competent person or persons to design and make, subject to the approval and by direction of such lord high treasurer or the said commissioners, stamps of a uniform design to be used for stamping meters throughout the United Kingdom, with only such variations of numbers or marks thereon as shall be sufficient to distinguish each inspector's district.

Models to be deposited. (*Board of Trade.*)

Portions of s. 3, repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19), have been omitted.

The powers and duties of the Treasury under this Act were vested in the Board of Trade by the Weights and Measures Act, 1878 (41 & 42 Vict. c. 49). The last-mentioned Act has been amended and extended by 4 Edw. 7, c. 28, which authorises the Board of Trade to make general regulations. In the Board of Trade Report under the Weights and Measures Acts, 1878 and 1889, dated August 4th, 1899 (Parliamentary Paper 333 of 1899), the following statement occurs: "In pursuance of s. 3 of the Sale of Gas Act, 1859, and s. 33 of the Weights and Measures Act, 1878, the Standards Department is now issuing to local authorities stamps of a uniform design for the year 1900, to be used for the inspection and stamping of meters throughout the United Kingdom, with such variation of number thereon as shall be sufficient to distinguish the district of each inspector of gas meters." And in the Report dated August 3rd, 1900 (Parliamentary Paper No. 341), it is stated that new gas meter stamps had been issued to the several local authorities mentioned in Appendix 10. There is also given a list of the gas companies and corporations whose gas measuring standards have been verified since the previous year.

Gas meter stamps.

The following question was asked and answered in the House of Commons in Session 1906:—

MR. S. COLLINGS (Lambeth, Kennington): I beg to ask the President of the Board of Trade if he is aware that the Sale of Gas Act, 1859, prescribes

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NOTE.

the method of testing gas meters, but makes no provision for testing the indices of these meters, although the largest amount of errors is likely to arise in such indices; that the Astronomer Royal reported to the Treasury in 1860 that this omission rendered the Act nugatory and useless; that a Select Committee of the House reported in favour of amending the Act; that in 1870 the Standards Commission also reported that the Act should be amended and the Board of Trade given power to make regulations; and that the Board of Trade prepared the draft of an amending Bill in 1882; and whether the Board of Trade is now prepared to introduce a Bill, or to take any other measures to remedy the present state of the law as to testing gas meters.

MR. LLOYD GEORGE: The Act in question does not specifically lay down the method of testing the indices of gas meters, but it does require that no meter shall be stamped unless it registers correctly within certain limits. I am aware that, as stated by my hon. friend, attention has from time to time been called to the absence of precise directions as to testing of indices, but the Board of Trade have not received any complaint on this point for some years past. I shall, however, be happy to look further into the matter, and to consider whether any steps seem necessary.—*Hansard*, Vol. 154, p. 864.

Copies of the models of gas-holder to be provided by order of general or quarter sessions in England, and by meetings of justices in Scotland.

4. In England at some general or quarter sessions of the peace within nine months next after the passing of this Act the justices of the peace of every county, riding, or division, or county of a city or county of a town, in general or quarter sessions assembled, and in such boroughs as may adopt this Act, as hereinafter provided, the town council at the meeting next after such adoption, and in Scotland the justices of the peace at a meeting to be called for the purpose by the sheriff of each county, and the magistrates of each royal burgh within nine months after the passing of this Act, and so from time to time at any subsequent general or quarter sessions or meeting so called, shall determine the number of copies of the said models of gasholders, with proper balances, indices, and apparatus as aforesaid, which they shall deem requisite for the testing of meters within their respective jurisdictions, and shall direct that such copies, verified and stamped at the exchequer, together with such number of stamps for stamping meters as they shall deem requisite, shall be provided for the use of the same, and shall fix the places at which such copies and stamps shall be deposited, and shall appoint a sufficient number of inspectors of meters for the safe custody of such copies and stamps, and for the discharge of the other duties hereinafter mentioned, and shall allot to each inspector a separate district, and from time to time, when necessary, shall sub-divide and re-allot such districts; and all such districts shall be distinguished by the number or mark applied thereto on such stamps; and they shall direct what reasonable remuneration shall be paid to such inspectors for the discharge of such duties as they shall have been ordered by such justices or town council or magistrates as aforesaid to perform; and they are hereby empowered to suspend or dismiss any inspectors so appointed, or to appoint additional inspectors as occasion may require: Provided always, that nothing herein contained shall extend to compel any town council in England or royal burgh of Scotland, except such as are county towns, wherein gas is used, to provide copies of the said models and stamps, or to appoint an inspector or inspectors for the performance of the duties

Appointment of inspectors.

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prescribed by this Act; and that it shall be lawful for the justices of the peace in any county, and for the magistrates of any royal burgh within such county, where they shall agree, to unite the whole or a portion of the county with such royal burgh, and to appoint one inspector therefor, and to provide at their joint expense copies of the said models and stamps to be used within such united districts: Provided always, that in every borough in England where there is a town council, not being a manufacturer or seller of gas, it shall be lawful for such town council within six months after the passing of this Act, after one month's notice duly given in the manner in which notices are usually published by such town council, to adopt this Act, if the majority of the members present at any council meeting at which the subject is appointed to be considered, shall so determine; and if no resolution to that effect shall be passed within such time, then the justices aforesaid, at their next practicable general or quarter sessions after the expiration of such six months, shall, in reference to any borough not so adopting this Act, carry this Act into effect; and in all boroughs as aforesaid in which the town council is a manufacturer or seller of gas, the justices of such boroughs shall have such and the like powers of adopting and carrying into effect the provisions of this Act within such boroughs as by this Act are given to town councils not being manufacturers or sellers of gas.

An Order in Council, dated June 29th, 1882, fixes the amount of error to be tolerated in any copies of the models of gasholders verified and deposited in the Standards Department of the Board of Trade as are provided by any justices, council, commissioners, or any other local authority. See Statutory Rules and Orders Revised, vol. 8, p. 134.

By the Weights and Measures Act, 1889 (52 & 53 Vict. c. 21), s. 15, the provisions of the Weights and Measures Act, 1878 (41 & 42 Vict. c. 49), and of that Act, as to the verification and reverification of local and working standards shall apply to the standards used by any local authority in testing meters under the Sale of Gas Act, 1859.

Powers transferred to county councils.

The powers conferred by this Act (as amended by the 23 & 24 Vict. c. 146), in so far as relates to the metropolis, were by the Metropolis Gas Act, 1861 (24 & 25 Vict. c. 79), transferred to the Metropolitan Board of Works, and under the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 40 (8), are now possessed by the London County Council. By the Local Government (England and Wales) Act, 1888 (51 & 52 Vict. c. 41), s. 3 (xiii.), the execution as local authority of the Acts relating to gas meters is transferred to the county council of each county. By s. 39 of the same Act, sub-s. (1), it is provided that where a borough, whether with or without a separate court of quarter sessions, contained according to the census of 1881, a population of less than 10,000, the powers, duties, and liabilities of the local authority in relation to gas meters shall cease, and the area of the borough shall for all the purposes of the Acts form part of the county in like manner as if it were not a borough. As regards county boroughs, s. 34 (3), enacts that the provisions of that Act with respect to gas meters, shall not apply to them.

Scotland.

See Sale of Gas (Scotland) Act, 1864 (27 & 28 Vict. c. 96), s. 1, *post*, p. 271, as to the adoption of the Act in royal burghs not co-extensive with the parliamentary boundaries. By the Local Government (Scotland) Act, 1889 (52 & 53 Vict. c. 50), s. 11, the administrative powers and duties of justices in regard to the execution as local authority of the Acts relating to gas meters are transferred to the county councils.

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Models and copies of gasholders to be provided by town councils, town commissioners, etc., and inspectors appointed.

5. In Ireland the town council or town commissioners of every borough or town, such town council or commissioners not being manufacturers or sellers of gas, shall, at a meeting of the town council or commissioners to be held within nine months after the passing of this Act, and so from time to time at any subsequent meeting, determine the number of copies of the said models of gasholders, with proper balances, indices, and apparatus as aforesaid, which they shall deem requisite for the testing of meters within their towns or boroughs respectively, and, shall direct that such copies, verified and stamped at the exchequer, together with such number of stamps for stamping meters as they shall deem requisite, shall be provided for the use of the same, and shall fix the places at which such copies and stamps shall be deposited, and shall appoint a sufficient number of inspectors of meters for the safe custody of such copies and stamps, and for the discharge of the other duties hereinafter mentioned, and shall allot to each inspector a separate district, and from time to time, when necessary, shall sub-divide and re-allot such districts, and shall direct what reasonable remuneration shall be paid to such inspectors; and they are hereby empowered to suspend or dismiss any inspector so appointed, or to appoint additional inspectors from time to time as occasion may require; and in all boroughs and towns in which the town council or town commissioners shall be manufacturers or sellers of gas, the justices of such boroughs and the grand jury of the county in which such boroughs or towns not having a separate commission of the peace shall be situate respectively shall have such and the like powers as by this Act are given to the town council, and town commissioners, not being manufacturers or sellers of gas, for carrying into effect the provisions of this Act within such boroughs and towns: Provided always, that the jurisdiction of such town council and town commissioners, justices, and grand juries respectively shall extend to all meters out of such boroughs or towns for measuring gas manufactured at any gasworks by which any such borough or town shall be supplied with gas.

By the Local Government (Ireland) Act, 1898 (61 & 62 Vict. c. 37), ss. 4 (1) and 21, the powers of the grand jury are transferred to the county councils.

Officers of the exchequer at Westminster to stamp copies of models.

6. The copies of the said models so directed by the said justices, magistrates, or town council to be verified and stamped at the exchequer shall be compared with the models deposited with the comptroller general of the exchequer as aforesaid, and if correct shall be verified and stamped by the comptroller general, or some other officer of the exchequer at Westminster, duly authorised . . . and no stamp duty shall be payable thereon.

By the Standards of Weights, Measures and Coinage Act, 1866 (29 & 30 Vict. c. 82), s. 14, a provision in this section relating to payment of fees upon verification and stamping a set of measures was repealed. The Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66), repeals s. 14. That repeal does not revive the enactment as to fees. See Interpretation Act, 1889, s. 38 (2) (a). By s. 9 of the Act of 1866, it is provided that from and after the passing of that Act, an indenture of verification of any standard or any endorsement on any such indenture shall not be liable to stamp duty, nor shall any fee be payable on the verification or reverification of any standard.

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Note.

Expense of providing copies of models, and remuneration of inspectors, defrayed out of county rates, etc.

7. The expense of providing and transmitting such copies of models of gasholders, with proper balances, indices, and apparatus as aforesaid, and of the stamp to be used by the inspectors, and the remuneration to the inspectors, shall be paid in England out of the stock raised in such counties, ridings, divisions, counties of cities or counties of towns, and in boroughs out of any funds applicable to lighting purposes, and if no such funds then out of the borough fund; and in Scotland such expenses in the respective shires and stewartries, and cities or royal burghs, shall be assessed by the commissioners of supply upon such shires and stewartries, and upon cities or royal burghs by the magistrates thereof, according to the real rent of lands and heritages as appearing on the valuation roll of such shires, stewartries, and burghs respectively, and in such manner and by such persons as the said commissioners of supply and magistrates respectively may determine and appoint; and such assessments shall be collected under the same powers of levying and recovery as are competent for levying and recovering the land tax: Provided always, that in the city of London the expenses and remuneration aforesaid shall be paid out of the consolidated rate raised by the commissioners of sewers of the city of London; and in Ireland such expenses in the respective boroughs and towns shall be provided for and paid respectively out of any funds applicable to lighting purposes, and, if no such fund, then out of any other borough or town fund.

The Commissioners of Sewers have now been superseded by the Common Council. See City of London Sewers Act, 1897, s. 7.

No maker or seller of meter, or person in the service of any gas company or manufacturer of meters or gas to be an inspector.

Inspector to enter into recognizances.

8. No maker, repairer, or seller of meters or of gas, or person employed in the making, repairing, or selling of meters or gas, shall be an inspector of meters under the provisions of this Act; and every inspector shall forthwith enter into a bond or recognizance to the Queen, to be sued for in any courts of record, in such sum, and either with or without a surety or sureties, as the justices, magistrates, town council, or other persons by whom he may have been appointed shall fix, for the due and punctual performance of the duties of his office, and for the due and punctual payment, at such time or times as he may be directed by the justices, magistrates, town council, or other persons by whom he may have been appointed, of all fees received by him under the authority of this Act, and for the safety of the said copies of models and stamps committed to his charge, and for their due restoration and surrender to such person or persons as may be appointed to receive them by the justices, magistrates, town council, or other persons aforesaid, immediately on his removal or other cessation from office.

Inspectors to attend at towns where gas is consumed, when

9. In England the justices in general or quarter sessions assembled, or the town council in boroughs adopting this Act at any meeting thereof, and in Scotland the justices or magistrates at a meeting called for the purpose, and in Ireland the town council or town commissioners

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required by justices.

of any such borough or town as aforesaid, shall determine and appoint on what days, at what hours, and what places each and every inspector shall attend with the said copies of models and stamps in his custody at each of the several towns and districts within their respective jurisdictions, as they shall deem expedient; and every such inspector so attending shall examine, test, and, if found correct, stamp all such meters as shall be required under the provisions of this Act to be so examined, tested, and stamped, and shall deface or destroy the stamp on any meter tested and found incorrect under the provisions of this Act; and he shall keep a book wherein he shall enter minutes of all such examinations and testings, with the numbers of identity and capacity marked by the manufacturer on such meters, and give, if required, a certificate under his hand of every such stamping and defacing; and every inspector shall once in every quarter of a year account to the treasurer of the county, riding, division, county of a city or county of a town, or borough or town, or to such other person as shall be duly authorised by those by whom he may have been appointed, for all fees received by him under this Act, and shall pay the amount thereof to such treasurer as aforesaid, who shall account for the same.

Inspector to pay fees to treasurer of county, etc.

Meters when stamped need not be restamped.

10. No meter duly stamped under the authority of this Act shall be liable to be restamped, although the same be used in any other place than that at which the same was originally stamped, but shall be considered as a legal meter throughout the United Kingdom, unless found to be incorrect within the meaning of this Act.

Penalty on inspector for misconduct.

11. In case any inspector of meters shall stamp any meter without duly testing and finding the same to be correct, or shall refuse, or for three days after being so required under the provisions of this Act neglect, without lawful excuse, to test any meter or to stamp any meter found to be correct on being so tested, or shall be guilty of a breach of any duty imposed upon him by this Act, or shall otherwise misconduct himself in the execution of his offence, every such offender shall upon conviction forfeit a sum not exceeding five pounds for every such offence.

Meters not to be stamped if incorrect by more than 2 per cent. in favour of the seller or 3 per cent. in favour of the consumer, and to be stamped if erroneous to no greater extent.

12. No meter shall be stamped which shall be found by the inspector to register, or be capable of being made by any contrivance for that purpose, or by increase or by decrease of the water in such meter, or by any other means practically prevented in good meters, to register, quantities varying from the true standard measure of gas more than two per centum in favour of the seller or three per centum in favour of the consumer; and every meter, whether stamped or unstamped, which shall be found by such inspector to register or be so capable of being made to register quantities varying beyond the limits aforesaid, shall be deemed incorrect within the meaning of this Act; and every meter which shall be found by such inspector to measure and register quantities accurately, or not varying beyond the limits aforesaid, and shall be found incapable by any such means as aforesaid of being made to register quantities varying beyond the limits aforesaid, shall be considered to be correct, and be stamped as aforesaid in such manner and on such part of the meter as shall be specially directed by the authority appointing him, or, in default of such direction, as shall in his opinion best prevent fraud: Provided always, that every meter having a measuring capacity at one revolution or complete action of the meter of not less than five cubic feet, and having permanently marked upon it in some conspicuous place the words "without float," shall be stamped by the inspectors if found correct, within the meaning of this Act, in all other respects except that it is capable of being made by abstraction of water to register incorrectly against the seller of gas; but it shall not be lawful after the time aforesaid to use in the sale of gas any such meter, when so stamped by the inspector, except by written agreement between the buyer and seller specifying that this description of meter shall be used.

Certain meters incorrect against the seller of gas may be used by agreement.

See notes to s. 4, *ante*, p. 261.

13. The following rules shall be observed by the inspector in testing meters under the provisions of this Act:

Rules for testing meters.

Firstly, the meter shall be tested for soundness or leakage only, and not for percentage of error, when fixed on a horizontal base, and with gas under a pressure equal to a column of water three inches high, with a light or lights consuming not more than one-twentieth part of its measuring capacity per hour marked thereon, not less than one-half of a cubic foot per hour, for all meters of a measuring capacity not exceeding one hundred cubic feet per hour, and not more than one-fortieth part of its said measuring capacity per hour for all meters of any greater measuring capacity per hour than one hundred cubic feet; and all meters found to work under such test shall be deemed sound meters, and any meter found not to work under such test shall not be stamped:

The meter to be tested for percentage of error shall be fixed on a horizontal base, and shall be tested at a pressure equal to a column of water five-tenths of an inch high, and passing the quantity of gas or atmospheric air per hour which shall be marked thereon as its measuring capacity per hour; and the water used in such testing, and the air of the room in which such testing shall be made, shall be as nearly as practicable of the same temperature as the gas or air passed through the meter.

See notes to s. 4, *ante*, p. 261.

14. If any person or persons shall make, except under the authority of this Act, or forge or counterfeit, or cause or procure to be made, except as aforesaid, or forged or counterfeited, or knowingly act or assist in the making, except as aforesaid, or forging or counterfeiting, any stamp or mark which may be hereafter used for the stamping or marking of any meter under this Act, every person so offending shall for every such offence forfeit on conviction a sum not exceeding fifty pounds or less than ten pounds; and if any person shall knowingly sell, utter, or

Penalty for counterfeiting stamps.

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dispose of, let, lend, or expose to sale, any meter with such forged stamp or mark thereon, every person so offending shall for every such offence forfeit on conviction a sum not exceeding ten pounds or less than forty shillings ; and all meters with such forged or counterfeited stamps shall be forfeited and destroyed.

Penalty for obstructing inspector.

15. Any person who shall knowingly repair or alter, or knowingly cause to be repaired or altered, or knowingly tamper with, or do any other act in relation to any stamped meter, so as to cause such meter to register unjustly or fraudulently, or who shall prevent or refuse to allow lawful access to any meter in his possession or control, or the supply of water thereto as hereinafter provided, or shall obstruct or hinder any examination or testing authorised by this Act of any such meter, shall on conviction forfeit a sum not exceeding five pounds, pay the fees for removing and testing, and the expense of purchasing and fixing a new meter ; provided that the payment of any such penalty as aforesaid shall not exempt the person paying from liability to indictment or other proceeding at law to which he would otherwise be liable, or deprive any person of the right to recover damages against such person for any loss or injury sustained by such act or default.

Consumers may use any stamped meter.

16. Every consumer of gas may purchase and use for the measurement of the gas supplied to him any meter duly stamped under the authority of this Act ; provided that the gas to be consumed per hour shall not exceed the quantity per hour the meter is intended to measure, so marked on the outside thereof as aforesaid.

After ten years all meters to be stamped.

17. After the expiration of ten years from the passing of this Act, all meters whatsoever not previously stamped which shall be used for buying and selling gas, or for the collecting of any rates or duties, or for making any charges on the passage, transmission, or conveyance of gas, shall be examined and tested under the authority of this Act, and stamped if found correct ; and every person who shall after the times respectively fixed by this Act knowingly use any meter which has not been so stamped as aforesaid, shall on conviction forfeit a sum not exceeding five pounds ; and any contract, bargain, or sale made by any such meter shall be void ; and every such meter so used shall, on being discovered by any inspector so appointed as aforesaid, be seized, and, on conviction of the person knowingly using or possessing the same, shall be forfeited and destroyed.

After twelve months, no meter to be sold, etc., unless stamped ; and unstamped meters may be stamped, if required, or stamped

18. No meter for the purpose of ascertaining the quantity of gas sold shall be fixed for use after the expiration of twelve months after the passing of this Act, unless the same shall have its measuring capacity at one revolution or complete action of the meter, and also the quantity per hour it is intended to measure in cubic feet, or multiples or decimal parts of a cubic foot, denominated or marked on the outside thereof in legible letters or figures, and shall be stamped by an inspector of meters under the provisions of this Act ; and every person who, after the

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meters substituted, at the expense of the person requiring it.

expiration of such twelve months, shall fix for use any such meter before it has been so stamped, shall be liable to a penalty of five pounds for every such unstamped meter; and all meters required to be tested and stamped, except as hereinafter mentioned, shall be delivered to the inspector at the place where his testing gasholder and apparatus may be kept; and every purchaser and seller of gas by meter may, at his own expense, at any time after the expiration of the said twelve months, require any unstamped meter by which his gas is measured to be examined, tested, and, if found correct, stamped; or he may at his own expense substitute a stamped meter in the place of any such unstamped meter: Provided always, that such purchaser or seller of gas shall, before removal of any such unstamped meter for the purposes aforesaid, give twenty-four hours notice in writing of such intended removal to the other party to the contract.

Fees for testing and stamping meters.

19. The fees for examination, comparison, and testing, with or without stamping, meters, shall be sixpence for each meter delivering a cubic foot of gas in four or more revolutions or complete repetitions of the action of the meter, and one shilling for each meter delivering a cubic foot of gas by any less number of revolutions or complete actions, or one revolution or complete action, and for each meter delivering more than one cubic foot of gas by one revolution or complete action the further sum of one shilling for every cubic foot of gas delivered at one revolution or complete action beyond the first cubic foot.

Power to justices and inspectors to enter houses, etc., and inspect gas measures and meters.

20. In England and in such boroughs and towns as aforesaid in Ireland it shall be lawful for any inspector authorised in writing under the hand of any justice of the peace in England or Ireland, or of any sheriff, justice, or magistrate in Scotland, at the request and expense of any buyer or seller of gas, who shall have given twenty-four hours notice in writing to the other party to the contract, at all seasonable times to enter any house or shop, store, warehouse, still, yard, or place whatsoever within his jurisdiction where any meter, whether stamped or unstamped, shall be fixed or used, and to examine and test the same, and, if necessary for such purpose, to remove such meter, doing as little damage thereby as may be; and if upon such examination and testing it shall appear that any such meter is incorrect within the meaning of this Act, or fraudulent, the same shall not be refixed or used again unless and until altered and repaired so as to measure and register correctly, and stamped; and the fees on such removal, examination, and testing of a meter, whether stamped and replaced or not, shall be double the fees hereinbefore made payable for testing and stamping, and shall be payable by the buyer or seller of gas, as the justice of the peace in England or Ireland, or the sheriff, justice, or magistrate in Scotland, as the case may be, shall determine, and shall be recoverable accordingly; Provided always, that in case the head office of the person or company to whom such notice is to be given shall be more than twenty miles distant from the meter referred to in such notice, three days notice in writing shall be given instead of twenty-four hours notice as aforesaid;

Sect. 20.

Supply of water to meters.

and provided also, that any person duly authorised by any company or persons selling gas by meter may supply water to any meter, so as to keep the water at the correct level.

Disputed decision of inspector to be referred to two inspectors of adjoining districts, etc.

21. In case of any dispute between the buyer and seller of gas by meter, or between any owner of a meter and any inspector of meters under this Act, respecting the correctness of any meter, the inspector shall, if required by any such person dissatisfied with his decision, give such party his reasons in writing for such decision, and such party may require such meter to be examined and re-tested by two inspectors of adjoining or neighbouring districts, to be named by any justice of the peace having jurisdiction in the district where such meter shall have been tested; and the unanimous decision of such last-mentioned inspectors shall be final as to the correctness or incorrectness of such meter, except in case of appeal to the general or quarter sessions; and in case such two inspectors shall not agree, the decision of the inspector of the district to which such meter belongs shall be considered final, except in case of appeal to the general or quarter sessions, as hereinafter provided; and the expenses of the proceedings to be taken under the powers hereby granted shall be ascertained by the justice, who shall also determine by and to whom the same shall be paid; and such expenses may be recovered in any court of competent jurisdiction.

Persons aggrieved may appeal to quarter sessions.

22. In England and in such boroughs and towns as aforesaid in Ireland all persons who may think themselves aggrieved by any act or decision of any inspector or inspectors of meters, or by any order, judgment, or determination of any justice of the peace, mayor, or chief magistrate, relating to any matter or thing in this Act mentioned or contained, may appeal to the justices of the peace, recorder, or other presiding officer at the then next practicable general or quarter sessions [*to be held for the city, borough, or county within which the alleged cause of appeal shall arise, first giving seven days notice in writing of such intention to appeal, and the grounds and nature thereof, to the party against whom such complaint is intended to be made, and forthwith after such notice entering into a recognizance before some justice of the peace, mayor, or other chief magistrate, with two sufficient sureties, conditioned to try such appeal and abide the order and award of the said court thereon; and the said justices, recorder, or other presiding officer shall either hear and determine the said complaints at such general or quarter sessions, or, if they think proper, shall adjourn the hearing thereof till the following general or quarter sessions of the peace to be held for such city, borough, or county*]; and the said justices, recorder, or other presiding officer may, if they or he see cause, reverse or alter such decision, and mitigate any penalty or forfeiture, [*and may order any money to be returned which may have been levied in pursuance of such order or determination, and may also order any such further satisfaction to be made to the party injured as they or he shall judge reasonable, and may also order such costs to be paid by the party complained against to the party appealing, or vice versâ, as they shall think reasonable*].

Sect. 22.

NOTE.

The portions of this section in italics are repealed by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), "so far as relates to any order, judgment, or determination of a justice of the peace, mayor, or chief magistrate." The procedure in such cases will now be governed by the Summary Jurisdiction Acts in force in England, Scotland, and Ireland respectively. These are defined by the Interpretation Act, 1889 (52 & 53 Vict. c. 63).

This Act and existing powers not to be cumulative.

23. Where any municipal corporation, local board of health, or two or more justices, or any other corporation or person now have powers of appointing inspectors of meters, and they or such inspectors now have powers of stamping, restamping, examining, or testing meters, those powers and the provisions of this Act shall not be cumulative; but after the expiration of nine months after the passing of this Act the provisions of this Act shall supersede all such powers.

Proceedings not to be quashed for want of form, or removed.

24. No proceeding to be had or taken in pursuance of this Act shall be quashed or vacated for want of form, or be removed by certiorari or by any other writ or proceeding whatsoever into any of her Majesty's courts of record at Westminster or elsewhere, any law or statute to the contrary notwithstanding.

As to recovery and application of penalties.

25. In England and in such boroughs and towns as aforesaid in Ireland all fees and penalties received and recovered under this Act shall be applied in aid of the stock or fund out of which the expenses of carrying the Act into effect shall be defrayed; and in Scotland all penalties incurred under the provisions of this Act shall be recoverable, with expenses, either before the sheriff of the county or the magistrates of the burgh or town corporate wherein the same may be incurred or where the offender may reside, or before two or more justices of the peace of such county, at the instance either of the procurator fiscal of court or any person who may prosecute for the same; and the whole penalties, after deducting all charges, and such remuneration to the person prosecuting as the said justices shall think fit, shall be applied in aid of the funds liable under the provisions of this Act to the cost of providing and maintaining copies of the said models in the place where such penalties shall be awarded; and it is hereby provided that it shall be competent for the said courts respectively to proceed in a summary way and to grant warrant for bringing the parties complained of before them, and, upon proof on oath by one or more credible witnesses, or on the confession of the offender, or on other legal evidence, forthwith to give judgment on such complaint without any written pleadings or record of evidence, and to grant warrant for the recovery of such penalties and expenses decerned for, failing payment within fourteen days after conviction, by poinding, or by imprisonment . . .

A portion of this section, repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19), is omitted.

Appeal in Scotland to commissioners of justiciary at circuit court.

26. In Scotland . . . it shall not be competent to appeal from or to bring the judgment of any sheriff or justices of the peace acting under this Act under review by suspension or reduction . . .

A portion of this section, repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19), is omitted.

Sects. 27 & 28.

27 & 28. *These sections, relating to limitation, etc., of actions and tender of amends, are repealed by the Public Authorities Protection Act,* 1893 (56 *&* 57 *Vict. c.* 61), *which see at p.* 1062, post.

SALE OF GAS ACT, 1860.

(23 & 24 VICT. C. 146.)

An Act to amend the Act for regulating Measures used in Sales of Gas. [28th August, 1860.]

[*Preamble repealed by the Statute Law Revision Act,* 1892 (55 *&* 56 *Vict. c.* 19).]

Calculation of time specified in recited Act.

1. Except as to things done before the passing of this Act under the authority of the said Act, where in the said Act anything is required to be done within a specified time after the passing of the same, such time shall be calculated as if the thirteenth day of October, one thousand eight hundred and sixty, had been the date of the passing of the said Act: Provided always, that, notwithstanding anything in the said Act contained, the said Act shall not come into operation in any county of England until the magistrates of such county in quarter sessions, or in any county in Scotland until the commissioners of supply of such county, or in any county of Ireland until the grand jury of such county, shall have resolved to bring such county under the operation of the Act.

This Act may now be cited as The Sale of Gas Act, 1860 (Short Titles Act, 1896).

The proviso was, so far as respects the metropolis, repealed by the Metropolis Gas Act, 1861 (24 & 25 Vict. c. 79), s. 2. That section was in turn repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66). That repeal does not revive the proviso so far as respects the metropolis. See Interpretation Act, 1889 (52 & 53 Vict. c. 63), ss. 11 (1) and 38 (2) (a).

The powers given to quarter sessions in England under the above section were transferred to county councils by the Local Government Act, 1888 (51 & 52 Vict. c. 41), ss. 3 (xiii.) and 39 (1). As to county boroughs, see s. 34 (3) (e). In like manner the powers of Commissioners of Supply in Scotland have been transferred to the county councils by the Local Government (Scotland) Act, 1889 (52 & 53 Vict. c. 50), s. 11 (5) (i). The powers of the Grand Jury in Ireland have been transferred to the county councils by the Local Government (Ireland) Act, 1898 (61 & 62 Vict. c. 37), ss. 4 (1), 21.

Construction of Acts and recovery of penalties

2. This Act and the recited Act shall be construed together as one Act, and all penalties and forfeitures incurred under the provisions of either Act shall be sued for and recoverable in all counties, ridings or divisions in England and Ireland before two or more justices of the peace at petty sessions, or before the mayor or other chief magistrate of any city, borough, town, or place.

SALE OF GAS (SCOTLAND) ACT, 1864.*

(27 & 28 Vict. c. 96.)

An Act to enable certain Royal and Parliamentary Burghs in Scotland to avail themselves of the Provisions of the Acts Twenty-second and Twenty-third Victoria, Chapter Sixty-six, and Twenty-third and Twenty-fourth Victoria, Chapter One hundred and forty-six, for regulating the Sale of Gas. [29th July, 1864.]

[*Preamble repealed by Statute Law Revision Act,* 1893 (56 *&* 57 *Vict. c.* 14).]

Magistrates of certain burghs may apply to their district provisions of recited Acts.

1. The magistrates of any royal burgh whose ordinary jurisdiction has been extended beyond the bounds thereof by Act or Acts of Parliament, or of any parliamentary burgh having a population of twenty thousand, in which burgh the said Acts have not been brought into operation, may, at any meeting to be called for the purpose, resolve that the provisions of the said recited Acts shall be applicable to the whole district subject to their jurisdiction on and after a certain date to be fixed by them; and on the said resolution being come to the magistrates shall publish the same and make proclamation thereof at least three months before the said date so fixed, and thereafter the said recited Acts shall apply to and may be enforced by the said magistrates within the whole district subject to the jurisdiction of the said magistrates: Provided always, that where in the first recited Act anything is required to be done within a specified time after the passing thereof, such time shall for the purposes of this Act be calculated from the date fixed in the said resolution for the provisions of the said recited Acts coming into operation with respect to such district.

METROPOLIS GAS ACT, 1860.

(23 & 24 Vict. c. 125.)

An Act for better regulating the Supply of Gas to the Metropolis. [August 28th, 1860.]

Whereas the following gas companies, (that is to say) "The Gaslight and Coke Company," "The City of London Gaslight and Coke Company," "The Commercial Gaslight and Coke Company," "The Equitable Gaslight Company," "The Great Central Gas Consumers Company,"

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* This short title is authorised by the Short Titles Act, 1896 (59 & 60 Vict. c. 14).

"The Independent Gaslight and Coke Company," "The London Gaslight Company," "The Phœnix Gaslight and Coke Company," "The Ratcliff Gaslight and Coke Company," "The Surrey Consumers Gas Company," "The South Metropolitan Gaslight and Coke Company," "The Western Gaslight Company (Limited)," "The Imperial Gaslight and Coke Company," or some of them, are respectively incorporated under the authority of Parliament for the purpose of supplying several districts of the metropolis with gas; and the said companies, instead of supplying gas by several mains in the same district, have agreed, as far as possible, each one to confine its supply to a separate district, in order to economise capital and avoid the too frequent opening of the public streets; and, subject to the provisions and restrictions of this Act, it is expedient that such districting should receive the sanction of Parliament: And whereas the regulations to which those companies are subject are not uniform: And whereas it is expedient that provision be made for the due regulation of all companies and persons supplying gas within the metropolis: May it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows; (that is to say,)

Main objects of the Act of 1860.

Prior to the passing of this Act the metropolitan gas companies were not bound to supply gas to their customers, and the districts within which they had statutory powers were so interlaced that much inconvenience ensued, *e.g.*, from the frequent breaking up of streets. Section 6 of the Act assigned a certain defined district to each metropolitan gas company, and provided that no other company or person should supply gas for sale within the said limits unless authorised by Parliament; and by s. 14, the supply of gas to the owners or occupiers (requiring such supply) of premises within fifty yards of any existing mains of a company was made compulsory. The Act also provided for the appointment of a gas examiner, and contained elaborate provisions in regard to the illuminating power and purity of the gas to be supplied, pressure and other matters. These last-mentioned enactments have been very extensively repealed by the private Acts of the large companies supplying gas in the metropolis, and an Act passed in 1905 on the promotion of the London County Council, and new enactments in their place have been substituted.

City of London Gas Act, 1868.

The City of London Gas Act, 1868 (31 & 32 Vict. c. cxxv.), by s. 2, enacts, that that Act should be read as one with the Act of 1860; and, by s. 3, enacted that "such parts of the Act of 1860 as are described in the first schedule to this Act, and any part of any special Act of any company inconsistent with this Act, so far only as they respectively relate to the companies" [meaning thereby the Gaslight and Coke Company, the City of London Gaslight and Coke Company, and the Great Central Gas Consumers Company, all by the said Act authorised to be amalgamated] "and the city, are hereby repealed as from the thirtieth day of September, 1868, and the Act of 1860 so amended shall, as to all the companies mentioned in the preamble of the said Act, be read throughout as if the Board of Trade had been inserted therein instead of her Majesty's principal Secretary of State for the Home Department." The following is the schedule of repealed clauses:

> "*Parts of Metropolis Gas Act,* 1860, *so far as they relate to the city, repealed.*
>
> "Section 2, as far as it incorporates the provisions of the Gasworks Clauses Act, 1847, with respect to the amount of profit to be received by the undertakers from the gasworks carried on for their benefit,

or imposes any restriction on a company in respect of the rate of dividend.

"Sections 7 to 12, both inclusive.

"Sections 25 to 34, both inclusive.

"Section 37.

"Sections 40 and 41."

The Act then proceeded to authorise the Board of Trade to appoint three gas referees (ss. 29—32); to enact elaborate provisions in regard to illuminating power, purity, testing, and price (ss. 33—70); quarterly reports by the chief gas examiner (s. 71), and pressure (ss. 84, 85). See, further, *post*, p. 301.

Imperial Gas Act, 1869.

In the following year the Imperial Gas Act, 1869 (32 & 33 Vict. c. cxxviii.), by s. 81, enacted that "such parts of the Act of 1860 as are described in the schedule to this Act, and any part of any special Act of the company inconsistent with this Act, so far only as they respectively relate to the company, are hereby repealed, and the Act of 1860 so amended shall, as to the company, be read throughout as if the Board of Trade had been inserted therein instead of her Majesty's principal Secretary of State for the Home Department." The sections thus repealed were 7 to 12 both inclusive, 25 to 34 both inclusive, s. 37, and ss. 40 and 41. In place of these the Act contained fresh provisions as to illuminating power, purity, pressure, testing, price, etc. This company afterwards became amalgamated with the Gaslight and Coke Company.

South Metropolitan Gas Act, 1869.

In 1869, also, the South Metropolitan Gaslight and Coke Company's Act, 1869 (32 & 33 Vict. c. cxxx.), by s. 4, enacted that "such parts of the Act of 1860 as are described in the first schedule to this Act, and any part of any special Act of the company inconsistent with this Act, so far only as they respectively relate to the company, are hereby repealed as from the thirtieth day of September, 1869, and the Act of 1860 so amended shall, as to the company, be read throughout as if the Board of Trade had been inserted therein instead of her Majesty's principal Secretary of State for the Home Department." The sections thus repealed, as regards the South Metropolitan Company, were s. 2 (so far as it incorporates the provisions of the Gasworks Clauses Act, 1847, with respect to the amount of profit to be received by the undertakers from the gasworks carried on for their benefit, or imposes any restriction on a company in respect of the rate of dividend), ss. 7 to 12 both inclusive, ss. 25 to 34 both inclusive, s. 37, and ss. 40 and 41. The Act follows on the lines of the City of London Gas Act, 1868, and makes provision for the appointment of gas referees, and contained fresh provisions as to illuminating power, purity, pressure, testing, price, etc., in place of those repealed. By s. 88, it is provided *inter alia* that nothing in the Act contained shall exempt the company or their gasworks from the provisions of the Metropolis Gas Act, 1860, "Excepting so far as those provisions are varied by this Act or 'the Act for regulating measures used in sale of gas,' as amended by subsequent Acts."

23 & 24 Vict. c. 146.

Gaslight and Coke Company's Act, 1873.

By the Gaslight and Coke Company's Act, 1873 (36 & 37 Vict. c. cxvi.), s. 4, it is provided that s. 110 of that company's Act of 1868 (which had provided that nothing in that Act contained should exempt the company or their gasworks from the provisions of the Metropolitan Gas Act, 1860, and certain other Acts), should be read and construed as if the Act of 1860 were omitted therefrom.

Commercial Gas Act, 1875.

In 1875, the Commercial Gas Act, 1875 (38 & 39 Vict. c. cc.), by s. 3, provided that "the following parts of the Metropolis Gas Act, 1860, shall not apply to the Commercial Company (that is to say):

"Section 2, as far as it incorporates the provisions of the Gasworks Clauses Act, 1847, with respect to the amount of profit to be received by the undertakers from the gasworks carried on for their benefit, or imposes any restriction on the company in respect of the rate of dividend.

"So much of s. 4 as defines the meaning of the words 'common gas' and 'cannel gas.'

"Sections 7 to 12, both inclusive.

> "Sections 25 to 34, both inclusive.
>
> "Sections 37 and 38.
>
> "Sections 40 to 44, both inclusive.
>
> "And such provisions of the Metropolis Gas Act, 1860, as apply to the Commercial Company shall be read and have effect as if the Board of Trade were named therein instead of one of her Majesty's principal Secretaries of State, and the Gasworks Clauses Act, 1871, shall not extend or apply to the Commercial Company."

The Act established a sliding scale of price, and contained fresh enactments as to illuminating power, purity, pressure, and testing.

Gaslight and Coke Company's Act, 1876.

In 1876, the Gaslight and Coke Company's Act, 1876 (39 & 40 Vict. c. ccxxv.), by s. 8, provided that the enactments of the Metropolis Gas Act, 1860, specified in Part II. of the same schedule, should, from and after the passing of that Act, cease to relate or apply to or affect the Independent Gaslight and Coke Company. Part II. of the schedule contained the following:—

> "Section 2, as far as it incorporates the provisions of the Gasworks Clauses Act, 1847, with respect to the amount of profit to be received by the undertakers from the gasworks carried on for their benefit, or imposes any restriction on a gas company in respect of the rate of dividend; so much of section 4 as defines the meaning of the words 'common gas' and 'cannel gas'; sections 7 to 12 both inclusive; sections 25 to 34 both inclusive; sections 37 and 38; sections 40 to 44 both inclusive."

This Act also established a sliding scale of price, and contained fresh enactments as to illuminating power, purity, pressure, and testing.

South Metropolitan Gas Company's Act, 1876.

In 1876, also, the South Metropolitan Gaslight and Coke Company's Act, 1876 (39 & 40 Vict. c. ccxxix.), established a sliding scale of price, and contained fresh enactments as to illuminating power, purity, pressure, and testing. That company's Act of 1869 had already largely repealed the Act of 1860.

Gaslight and Coke and other Gas Companies Acts Amendment Act, 1880.

In 1880, the Gaslight and Coke and other Gas Companies Acts Amendment Act, 1880 (43 & 44 Vict. c. clxxxi.), repealed (see *post*, p. 333) all the provisions of the Commercial Gas Company's Act, 1875, the Gaslight and Coke Company's Act, 1876, and the South Metropolitan Gaslight and Coke Company's Act, 1876, which made special provisions as to illuminating power, testing, etc., in place of those contained in the Metropolis Gas Act, 1860, and fresh enactments on all these subjects were made to replace those repealed.

In 1900, the South Metropolitan Gas Act, 1900 (63 & 64 Vict. c. clxii.), provided for the reduction of the illuminating power of the gas of that company, and for a reduction of the standard price (see *post*, p. 339).

See also the provisions of the Commercial Gas Act, 1902, *post*, p. 341; of the Gaslight and Coke Company's Act, 1903, *post*, p. 346; of the London Gas Act, 1905, *post*, p. 295; and of the Gaslight and Coke Company's Act, 1909, *post*, p. 350.

It appears, therefore, that the greater part of the Metropolis Gas Act, 1860, has been repealed as regards the whole of the metropolis, the thirteen companies enumerated in it having been amalgamated with one or other of the three great companies above mentioned. Of the enumerated companies, the following have been amalgamated with the Gaslight and Coke Company, viz.: the City of London Gaslight and Coke Company; the Equitable Gaslight Company; the Great Central Gas Consumers Company; the Independent Gaslight and Coke Company; the London Gaslight Company; the Western Gaslight Co., Limited; and the Imperial Gaslight and Coke Company. With the Commercial Gas Company has been amalgamated the Ratcliff Gaslight and Coke Company; and with the South Metropolitan Gaslight and Coke Company (now called the South Metropolitan Gas Company) have been amalgamated the Phœnix Gaslight and Coke Company, and the Surrey Consumers Gas Company. By the Crystal Palace District Gas Act, 1893 (56 & 57 Vict. c. clxviii.), s. 30, it is enacted that, notwithstanding the exception contained in s. 64 of the South Metropolitan Gas Act, 1876 (39 & 40 Vict. c. ccxxix.), that company and the South Metropolitan

Company may, subject to the provisions and restrictions in that section contained, amalgamate their undertakings. The section further provides that in the event of any scheme of amalgamation under that section being submitted to the Board of Trade, notice shall be given by that Board to every local authority within the limits of supply, and that Board shall receive and consider any objections and representations made by any such local authority. The name of the Crystal Palace Company was changed to the South Suburban Gas Company by the South Suburban Gas Act, 1904.

Accounts of metropolitan gas companies.

Amongst the sections of the Act of 1860, repealed as regards all the three great companies, is s. 41, in regard to the publication of annual accounts in a prescribed form. The special Acts of 1875 and 1876 contain similar provisions, and these accounts are each year laid before Parliament by the Board of Trade. See also s. 27 of the South Metropolitan Gas Act, 1900, *post*, p. 340.

Annual returns to Parliament.

In the return annually laid before Parliament relating to all authorised gas undertakings in the United Kingdom, the details of the capital, dividends, authorised and paid, and other information relating to the three great companies, will be found.

By the Gaslight and Coke Company's (Capital Consolidation) Act, 1898 (61 & 62 Vict. c. clxxii.), s. 21, it is provided that certain scheduled Acts shall, "save so far as the same may have been repealed, apply in regard to the company, throughout its district for the time being." Among these Acts is the Metropolis Gas Act, 1860.

On the subject of the foregoing notes, see further in the INTRODUCTION.

Short title.

1. This Act may for all purposes be cited as "Metropolis Gas Act, 1860."

10 & 11 Vict. c. 15, incorporated with this Act.

2. The Gasworks Clauses Act, 1847 (except so far as the provisions thereof are inconsistent with this Act), is incorporated with and forms part of this Act, and shall apply to the several companies before named or referred to as fully as if the gasworks of the several companies were authorised by this Act; and the expression "undertakers" in the recited Act shall be held to apply to every gas company affected by this Act; but it shall not be lawful for any gas company, by the application of any of their profits or funds, to make up to the prescribed rate, or the rate of ten pounds per centum per annum where no such rate shall be prescribed, any dividend which shall have been payable more than six years previously; provided, that the powers vested in the justices by the said Act shall be exercised by a magistrate.

The Acts of the South Metropolitan Gas Company, 1869 (32 & 33 Vict. c. cxxx.), the Commercial Gas Company, 1875 (38 & 39 Vict. c. cc.), and the Gaslight and Coke Company, 1876 (39 & 40 Vict. c. ccxxv.) (by which Acts a sliding scale of profits is introduced), repeal this section "so far as it incorporates the provisions of the Gasworks Clauses Act, 1847, with respect to the amount of profit to be received by the undertakers from the gasworks carried on for their benefit, or imposes any restriction on the company in respect of the rate of dividend." The City of London Gas Act, 1868, also contained a repeal of this section to the extent above stated. See s. 3, *post*, p. 302, and the Schedule, *post*, p. 308.

As to back dividends, see p. 209.

Companies and persons to whom Act applies.

3. This Act applies to the several gas companies, and to all persons already or hereafter supplying gas within the metropolis, except as hereinafter excepted.

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Interpretation of terms.

4. In the construction of this Act the following words and expressions have the following meanings, unless excluded by the subject or context; (that is to say,)

The expression "gas company" or "gas companies" means and includes any and every company, and any person or persons supplying gas within the limits of this Act:

The expression "local authority" includes the Metropolitan Board of Works, vestries, and district boards appointed under an Act of the session of the eighteenth and nineteenth years of the reign of her present Majesty, chapter one hundred and twenty, for the local management of the metropolis:

The Act here referred to is the Metropolis Management Act, 1855.

The powers, duties, and liabilities of the Metropolitan Board of Works were transferred to the London County Council by the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 40 (8). Under the London Government Act, 1899 (62 & 63 Vict. c. 14), the borough councils become the local authority in the place of the vestries and district boards.

The word "inspector" or "inspectors" shall mean any metropolitan gas inspector or inspectors to be appointed under this Act:

The word "consumer" means a person receiving or entitled, in accordance with this Act, to receive a supply of gas from any gas company:

The word "the metropolis" has the same meaning as in the said Act of the eighteenth and nineteenth years of her present Majesty, chapter one hundred and twenty:

The word "district" means, with respect to every gas company supplying gas wholly or in part within the metropolis, the district, so far as it is within the metropolis, within which the gas company are from time to time authorised to supply gas, and means, with respect to any person or persons not being a gas company, but supplying gas wholly or in part within the metropolis, the district within the metropolis within which he or they shall from time to time as a trade or business supply gas:

The word "street" includes square, court, alley, highway, lane, road, thoroughfare, and public passage or place:

The word "premises" includes public and private messuages and other buildings, lands, and tenements whatsoever:

The word "the gasworks" means the works of the respective gas companies, and the works connected therewith:

The word "rate" includes all rents and other payments for a supply of gas:

The word "meter rent" includes all rents and other payments for the use of gas meters:

Sect. 4.

The word "magistrate" means any police or stipendiary magistrate acting in and for the district of the metropolis in which the matter referred to him arises, and in the city of London and the liberties thereof shall mean any justice of the peace for the city of London and the liberties thereof:

The words "common gas" shall mean gas of an illuminating power hereinafter defined of not less than twelve candles:

The words "cannel gas" shall mean gas of an illuminating power hereinafter defined of not less than twenty candles.

The Commercial Gas Act, 1875 (38 & 39 Vict. c. cc.), and the Gaslight and Coke Act, 1876 (39 & 40 Vict. c. ccxxv.), declare inapplicable to those companies respectively so much of this section as defines the meaning of the words "common gas" and "cannel gas."

Limits of Act.

5. The limits of this Act shall be the metropolis: Provided always, that this Act and the several clauses and provisions thereof shall not extend or apply or be construed to extend or apply to the several gas companies set forth and enumerated in the schedule annexed to this Act; provided also, that the districts severally specified and described in the Acts and instrument of incorporation respectively mentioned in the said schedule, or within which the said companies or any of them are now supplying gas (notwithstanding the said districts, or any portions thereof, are or may be within the limits of the metropolis as defined by this Act), shall not be included or deemed to be included in the expression "the metropolis," or any extension thereof which may hereafter be made under the provisions of the hereinbefore-mentioned Act of the eighteenth and nineteenth Victoria, chapter one hundred and twenty; provided also, that if the said companies or any of them shall supply gas in parts of the metropolis other than those within their respective districts as defined in the said schedule, then the provisions of this Act shall be held to apply to such companies respectively so far only as regards such extended limits as may be within the metropolis.

Sanctioning assignment of districts to gas companies to be subject to triennial revision.

6. The limits of each of the said companies shall be the respective districts supplied with gas by such companies as the same are defined upon four duplicate maps, signed by the Right Honourable Thomas Henry Sutton Sotheron Estcourt, and which maps have been severally deposited with the respective clerks of the peace for the counties of Middlesex, London, Surrey, and Kent; provided, that at the expiration of three years next after the passing of this Act, and of every three years thereafter, her Majesty's Principal Secretary of State for the Home Department for the time being may, either upon the application and with the consent of any two or more of the said gas companies whose districts adjoin one another, make any alteration in the boundaries of such districts, or, upon the application of any local authority, or upon the requisition of not less than twenty gas consumers within any district or districts proposed to be affected, and upon proof to his satisfaction being given that any of

Sect. 6 the said gas companies are not in a condition adequately to supply with gas their respective districts, or have substantially failed to fulfil the obligations imposed by this Act, may make such alterations in the boundaries of such districts, or admit any new company respectively, as he thinks proper ; and all such alterations shall be certified on one or more maps, to be signed by the said Secretary of State, and deposited with one or more of the said clerks of the peace ; and such last-mentioned map or maps shall be binding on all parties ; and the provisions of this Act shall be held to apply to the several districts when so altered, and to the several companies affected thereby, as fully and effectually as if no alteration in such districts had been made ; and no other company or person than the company to whom such limits are for the time being assigned or shall hereafter be assigned shall supply gas for sale within the said limits, unless authorised by Parliament so to do ; provided, that before proceeding to consider the necessity for altering any of the said districts the said Secretary of State shall cause at least one month's notice to be given of such application to all parties interested therein or affected thereby, and such notice shall state the day and hour when and the place where such application will be considered ; and notices to be given to any gas company shall be left with the secretary or some other principal officer of the company, and notices to be given to any local authority shall be left with the clerk or some other principal officer of the said local authority.

The Board of Trade has been substituted for the Secretary of State under this section. See note, *ante*, pp. 272, 273.

The effect of this section, as between the several companies enumerated in the Act, was to give to each company a monopoly in its own district. By s. 54 the rights of various parties are saved, including "any powers now exercised or possessed in respect of the manufacture or supply of gas within the metropolis by any railway company, or by any other person or persons making or supplying gas for his or their own use, and not making or supplying gas to the public as a trade or business." At the time the Act passed the Great Western Railway Company had a contract with the West London Junction Gas Company to supply the railway company with gas by meter at Wormwood Scrubbs, the company thence conveying the gas in their own pipes to Paddington. The railway company lighted with the gas not only their own line and station, but also the Great Western Hotel, of which they were the owners, and some carriages of the Metropolitan Railway, in which they had an interest. The places lighted were within the district allotted to the plaintiffs under s. 6. Vice-Chancellor STUART held that the railway company were not in the circumstances supplying "to the public," and were therefore protected by s. 54 (*Imperial Gaslight and Coke Co.* v. *West London Junction Gas Co.* (1867), 15 L. T. (N.S.) 66). On appeal to the Lords Justices, the plaintiffs' counsel gave up the case, except as to the question of the supply of gas to the hotel. The judgment of the Vice-Chancellor was affirmed (W. N. (1868) 1 ; 58 L. T. (N.S.) 900, n.). The decision of the Lords Justices in this case will be found elaborately commented on by Lord HALSBURY, L.C., in *Gaslight and Coke Co.* v. *South Metropolitan Gas Co.* (1890), 62 L. T. 126. In that case no question arose under s. 54. The London and South Western Railway Company's Nine Elms Station was partly within the district of the appellant company and partly within that of the respondent company. The respondents, on being required to do so by the railway company, provided a meter at a point within their own district, from which they supplied gas which was used for lighting the whole station, including the part within the district of the appellants, to which it was conducted through pipes laid on the premises of the railway company. The House of Lords held this to be an infringement of s. 6, reversing the judgment of the Court of Appeal, who had decided (58 L. T. (N.S.) 899) that the sale and delivery of the gas took place at the meter, and that therefore there was no infringement of s. 6. The Metropolitan Electric Supply Company, Limited, were by a special Act obtained in 1889 and by three subsequent provisional orders, authorised to supply electricity within four distinct areas of supply, with (in each case) the usual prohibition in regard to supplying beyond the area of supply. In 1898 the company obtained a special Act authorising them to acquire land in the parish of Willesden (which was beyond any of their authorised areas of supply) and to erect thereon a generating station for the purposes of their already authorised areas of supply. In the same year the Willesden Urban District Council obtained statutory powers to supply electricity within their district. In 1903 the company commenced to supply electricity to certain sidings of the London and North Western Railway Company, which were within the district of the council and which adjoined the Willesden generating station. On an application for an injunction by the Attorney-General on the relation of the District Council, the company contended that they were a limited company as well as a statutory company; that by their Memorandum of Association their powers were unlimited in the respects complained of, and that the prohibition contained in their Act and Orders was not general and did not prevent them from exercising their general powers. FARWELL, J., decided against this view and granted an injunction. This decision was affirmed by the C. A. (*Attorney-General* v. *Metropolitan Electric Supply Co., Ltd.*, [1905] 1 Ch. 757). *Cf. Attorney-General on relation of Wakefield Union* v. *Morley Corporation and G. N. Rail. Co.*, Jl. of G. L., March 6th, 1894, vol. 63, p. 441; *Halifax Corporation* v. *Morley Corporation*, *ib.*, and May 8th, 1894, vol. 63, p. 855; 10 T. L. R. 454, and *Seaton* v. *Linlithgow Commissioners* (1900), 2 F. 907. The decision in *Gaslight and Coke Co.* v. *South Metropolitan Gas Co.*, *supra*, was followed in *Attorney-General* v. *West Gloucester Water Co.*, cited *ante*, at p. 153.

7. *On complaint as to quantity or quality, Secretary of State may appoint a person as inspector to inquire and report.*

8. *Power of inspector so appointed.*

9. *Penalty on obstructing inspector.*

10. *Notice to company by Secretary of State, if complaint well founded.*

11. *Company to remove ground of complaint.*

12. *Gas companies to obey orders of Secretary of State.*

Sections 7 to 12 are repealed by the City of London Gas Act, 1868 (31 & 32 Vict. c. cxxv.), s. 3, so far as they relate to the city of London; by the South Metropolitan Gas Act, 1869 (32 & 33 Vict. c. cxxx.), s. 4; by the Commercial Gas Act, 1875 (38 & 39 Vict. c. cc.), s. 3; and by the Gaslight and Coke Companies Act, 1876 (39 & 40 Vict. c. ccxxv.), s. 8, so far as they relate to those companies respectively. Sections 7 to 12 have again been repealed by the London Gas Act, 1905, s. 20, see *post*, p. 300. As to the Act of 1868, see further the footnote at p. 301.

Costs of altering district.

13. All the costs, charges, and expenses of and incident to any inquiry and decision of the said Secretary of State under this Act shall from time to time be borne and paid by such parties as the said Secretary of State shall direct; and such decision may, upon an ex parte application, be made a rule of any of her Majesty's superior courts of law at Westminster.

The duties of the Secretary of State under this Act have been transferred to the Board of Trade. See note at pp. 272, 273.

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Gas companies to provide pipes, and supply gas and meters at prescribed rents.

14. Every gas company from time to time supplying gas within any district shall, as to any premises or street within such district not already supplied with gas, and which shall lie within fifty yards of any existing mains, at their own expense, on being required by the owner or occupier of any premises within the district or in part within the district, who shall contract for not less than two years to pay gas rates in respect of such supply to an amount equal to twenty per cent. upon the outlay, provide and lay all proper and sufficient communication, service, and other pipes up to the premises of such owner or occupier, to communicate with the gas company's mains, and shall, if so required by the owner, occupier, or local authority, furnish him or them, at the rate prescribed by this Act, with a supply of gas for the purpose of being used in or on the premises, or for lighting the street, and, if so required by the owner or occupier, furnish him with one or more meters, for ascertaining the quantity of gas consumed ; provided that the gas company shall not be bound to supply more than one meter for each consumer occupying a separate dwelling or apartment, nor any meter exceeding a five-light meter ; provided also, that the meter rent which the said company shall be entitled to claim for such meter shall not exceed ten per cent. on the net cost of such meter ; . . .

See notes to ss. 11 and 39 of the Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41), *ante*, pp. 223 *et seq.*, and pp. 245 *et seq.*

A proviso to this section is repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

See a report by a Committee of the London County Council on the subject of meter rents charged by the London Gas Companies, Jl. of G. L., May 4th, 1895, p. 1028.

Security to be given to gas company if required.

15. Provided, that the owner or occupier, if so required in writing by the gas company or any of their officers, shall, before he is entitled to have the pipes provided and laid, or to have a supply of gas or of meters furnished, give to the gas company such security for the payment of the rate for the gas to be supplied to him, and of the meter rent for every meter to be supplied to him, as he and the gas company agree on.

Under s. 39 an incoming tenant is not liable for payment of arrears due from preceding tenant. *Cf.* ss. 11 and 16 of the Act of 1871, *ante*, pp. 223 and 229.

Section 77 of the Commercial Gas Act, 1875 (38 & 39 Vict. c. cc.), provides that

> "Sections 15 and 16 of the Metropolis Gas Act, 1860, which require security to be given, shall apply to the supply of gas or of meters to any person who shall succeed a tenant in the occupation of a house or premises where at the time of such persons entering into possession gas was consumed and who shall desire to continue to use the gas of the Commercial Company as though the company had not theretofore supplied the said house and premises and the company in default of such person's compliance may discontinue the supply of gas to such person and remove the meter." Similar provisions are contained in the Gaslight and Coke Companies Act, 1870 (s. 13), and the South Metropolitan Gas Companies Act, 1869 (s. 72).

Differences as to security

16. Provided, that if the owner or occupier and the gas company cannot agree thereon, the security to be given shall be determined by a

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to be determined by a magistrate.

magistrate; and any single magistrate shall, on the application of the owner or occupier and the gas company, or either of them, determine the nature and amount of the security to be given; and the security may, as the magistrate thinks fit, be the deposit with the gas company or with any person approved by the magistrate, or the prepayment to the gas company, of a sum of money or any other security which the magistrate thinks sufficient and reasonable; and the determination of the magistrate shall be binding on all parties, and final: Provided, that if the security be the deposit with the gas company of a sum of money, the gas company shall pay interest thereon to the consumer at such rate as the magistrate shall determine.

See notes to ss. 11 and 16 of the Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41), *ante*, pp. 223 *et seq.*, and p. 229.

Penalty on gas company failing to provide pipes or supply of gas or meters.

17. If the gas company, not being entitled to require or not having required any security, wilfully fail for seven days after being thereunto required in writing by the consumer, or, where the security agreed on or determined by the magistrate is given, shall wilfully fail for fourteen days thereafter to provide and lay all proper and sufficient communication, service, and other pipes, or to furnish a supply of gas, or to furnish any meter, pursuant to the provisions of this Act, then and in every such case the gas company shall, on a summary conviction before a magistrate, forfeit and pay to the consumer not exceeding forty shillings for every day after the expiration of seven or fourteen days respectively during which the failure continues.

Since the passing of the Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41), those of the metropolitan gas companies which are affected by it (as to which see the notes *ante*, p. 220) are no longer entitled to seven days notice; and are bound to afford a supply after reasonable notice in accordance with s. 11 of that Act (*South Metropolitan Gas Co.* v. *Noakes* (1889), 61 L. T. 556).

Gas to be consumed by meter if required by companies.

18. Provided, that every private consumer shall, if so required in writing by the gas company, consume the gas by meter; but any consumer may, if he thinks fit, provide his own meter.

Gas companies may contract for supply.

19. Subject to the provisions of this Act, every gas company, from time to time, may enter into any contract with any owner, occupier, or local authority for all or any of the following purposes; that is to say, for supplying him or them with gas, and with pipes, burners, meters, lamps, lamp posts, and other apparatus, and for the repair and cleansing and for the lighting and extinguishing thereof, in such manner and on such terms and conditions as the parties agree.

Contracts valid though not under seal.

20. Provided, that, notwithstanding its being required by any Act of Parliament or otherwise that the gas company's contracts shall be under seal, every contract of the gas company entered into in accordance with this Act shall without seal be binding on them, if the contract be signed by at least two of their directors, or by their secretary or other officer, by the authority of at least two of their directors.

See notes to s. 1 of the Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), *ante*, pp. 147 *et seq.*

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Restrictions on contracts with gas companies.

21. Provided, that no contract for any of those purposes shall contain any term or condition contrary to any of the provisions of this Act, or for giving in case of difference the sole arbitrament thereon to the gas company or any officer or person who is or has been employed by them, or who may have a pecuniary interest in such company, or for requiring any notice by a consumer discontinuing his supply of gas or meter which shall make him liable to pay more than one month's rate or meter rent after the time of the service of the notice, or which shall entitle the gas company, except for breach of any of the provisions of this Act, to discontinue any supply of gas by less than one month's notice in writing to the consumer, unless the rate due for gas shall be in arrear, in which case three days notice in writing to the consumer shall be sufficient.

See *Commercial Gaslight Co.* v. *Scott* (1875), L. R. 10 Q. B. 400, and other cases cited in notes to s. 3 of the Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41), *ante*, p. 220).

Gas companies to light streets when required by local authority.

22. The gas company shall well and effectually light all public lamps in all streets which they are required by the local authority to light, and shall, according to the terms of their contract, supply to the local authority so much gas as they require for their public lamps; provided, that the gas company shall not be compelled to light any street with lamps at a greater distance from each other than seventy-five yards.

Local authorities may provide lamp posts and lamps.

23. The local authority may provide and keep in repair their own public lamp posts and lamps, and apparatus connected therewith, and, in case of their electing to burn by meter, light and extinguish the lamps, and defray the expenses thereof.

As to penalty for damaging lamp posts in the metropolis, see Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 206; and as to affixing bills, notices, etc., see Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102), s. 90.

Service pipes to be fully charged with gas.

24. Every gas company shall, unless prevented by necessary repairs or unavoidable accident, at all times keep all their branch or service pipes fully charged with gas, and the stopcocks so turned as not to prevent the branch or service pipes from being at all times filled with gas.

25. *Illuminating power and purity of gas.*

26. *Penalty for deficient illuminating power or impurity.*

27. *Appointment by local authority of examiner of gas.*

28. *Examination of gas, and report thereon.*

29. *Two or more local authorities may join in the appointment.*

30. *Complaint to a magistrate as to supply of gas.*

31. *Hearing on report.*

32. *Order on hearing.*

33. *Gas company to obey order.*

34. *Gas companies to afford facilities for examination under this Act.*

Sects. 25—34 are repealed by the City of London Gas Act, 1868 (31 & 32 Vict. c. cxxv.), s. 3; the South Metropolitan Gas Act, 1869 (32 & 33 Vict. c. cxxx.), s. 4; the Commercial Gas Act, 1875 (38 & 39 Vict. c. cc.), s. 3; and the Gaslight and Coke Company's Act, 1876 (39 & 40 Vict. c. ccxxv.), s. 8.

The same sections have again been repealed by the London Gas Act, 1905, s. 20. See *post*, p. 300.

Limit of charge for gas and meters.

35. No gas company shall . . . demand or take for any gas or five-light meter supplied by them any sum of money exceeding the rate or meter rent by this Act authorised.

Certain words omitted from this section are repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

36. *Determination of existing contracts.*

A proviso to this section was repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66), and the remainder of the section by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

37. *Limit of charge for gas supplied to public lamps.*

Repealed by the City of London Gas Act, 1868 (31 & 32 Vict. c. cxxv.); South Metropolitan Gas Act, 1869 (32 & 33 Vict. c. cxxx.); Commercial Gas Act, 1875 (38 & 39 Vict. c. cc.); and the Gaslight and Coke Company's Act, 1876 (39 & 40 Vict. c. ccxxv.). In each of these Acts new provisions are substituted. See *post*. Section 37 has been again repealed by s. 20 of the London Gas Act, 1905. See *post*, p. 300.

38. If any difference arise between the local authority and the gas company with respect to any alteration in the test, or to the rate to be charged for gas supplied or for lighting any public lamp, the difference shall be referred to and be determined by arbitration in the manner prescribed by the Companies Clauses Consolidation Act, 1845, with respect to the settlement of disputes by arbitration.

This section has been repealed by the Commercial Gas Act, 1875, and by the Gaslight and Coke Company's Act, 1876. The South Metropolitan Gas Act, 1869 (32 & 33 Vict. c. cxxx.), s. 69, does not repeal it, but substitutes the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), for the Companies Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16).

Incoming tenant not to pay arrears of outgoing tenant, unless by express agreement.

39. In case any consumer leave the premises where gas was supplied to him without paying to the gas company the rate or meter rent due from him, the gas company shall not require from the next tenant of the premises payment of the arrears so left unpaid, unless the incoming tenant agreed with the defaulting consumer to pay the arrears; but the gas company shall, notwithstanding any such arrears, in the absence of collusion between the outgoing and incoming tenant, supply gas to the incoming tenant, as required by this Act, on being required by him so to do.

The Gaslight and Coke Company's Act, 1872 (35 Vict. c. xxiv.) provides:

> "Section 18. In case any consumer leaves the premises where gas was supplied to him without paying to the Company the rate or meter rent due from him, the Company shall not require from the next tenant of the premises payment of the arrears so left unpaid unless the incoming tenant agreed with the defaulting consumer to pay the

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> arrears, *or unless the incoming tenant shall continue the trade or business of the outgoing tenant, and shall have paid to the owner, lessee or mortgagee in possession, or to the outgoing tenant of such premises a consideration for so doing;* but the Company shall, notwithstanding any such arrears, in the absence of collusion between the outgoing and incoming tenant, supply gas to the incoming tenant as required by this Act on being required to do so."

The earlier and later portions of this section are substantially identical with the section in the text, but the middle portion put in italics does not there occur. In the case of *Gaslight and Coke Co.* v. *Mead* (1876), 45 L. J. M. C. 71, a question arose as to the effect of the words in italics. The respondent became tenant of a licensed house by assignment of the lease and purchase of the goodwill and business from the outgoing tenant M. When M. left the premises he was indebted to the gas company for one quarter's gas. The respondent, on refusing to pay this arrear, was summoned before the justices. On a case stated, the Queen's Bench Division held that the words in italics did not impose on the incoming tenant any personal liability to pay.

In a later case under the above section, the incoming tenant having installed electric light, did not "require" any supply of gas from the company. The company brought an action in the county court. The county court judge, and afterwards a Divisional Court, followed the decision in *Mead's Case, supra.* The Court of Appeal considered that *Mead's Case* had been wrongly decided, and that the gas company were entitled to recover the arrears. In the House of Lords this judgment was reversed and the decision of the Divisional Court restored. The effect of this decision is that if the new tenant does not "require" gas he cannot be made to pay his predecessor's arrears, but if he does "require," the gas company are entitled to refuse to supply unless he pays the arrears (*Cannon Brewery Co.* v. *Gaslight and Coke Co.*, [1904] A. C. 331).

40. *Appeal by consumers to Home Secretary on rise of price of gas.*

41. *Home Secretary may issue form of accounts to be filled up by gas companies.*

Sects. 40 and 41 have been repealed by the City of London Gas Act, 1868 (31 & 32 Vict. c. cxxv.); the South Metropolitan Gas Company's Act, 1869 (32 & 33 Vict. c. cxxx.), s. 4; the Commercial Gas Company's Act, 1875 (38 & 39 Vict. c. cc.), s. 3; and the Gaslight and Coke Company's Act, 1876 (39 & 40 Vict. c. ccxxv.), s. 8. These Acts transferred to the Board of Trade the duties of the Home Secretary under the Act of 1860. See note at pp. 272, 273.

Sects. 40 and 41 have been again repealed by the London Gas Act, 1905, s. 20. See *post*, p. 300.

Gas companies to cause maps of their districts to be made.

42. Every gas company shall within one year after the passing of this Act cause a map to be made of the district within which their mains or district mains then lie, on a scale not less than six inches to a mile, and shall cause to be marked thereon the line of all their then existing mains and district mains, and shall once in every year correct such map and make such additions thereto as will show the line of all their then mains and district mains as aforesaid.

This and the following two sections have been repealed as regards the Commercial Gas Company by the Commercial Gas Act, 1875 (38 & 39 Vict. c. cc.), and as to the Independent Gaslight and Coke Company (amalgamated with the Gaslight and Coke Company) by the Gaslight and Coke Company's Act, 1876 (39 & 40 Vict. c. ccxxv.). As regards the former company, see s. 70 of their Act of 1875, *post*, p. 317. As regards the latter company, see s. 88 of the City of London Gas Act, 1868, *post*, p. 307. See also ss. 70, 71 of the South Metropolitan Gas Company's Act, 1869.

As to deposit and inspection of the maps.

43. Every map, or a copy thereof, so made by or for each company, with the date expressed thereon of the last time when it was so corrected, shall be deposited, certified by their secretary or clerk by writing under his hand to be a true copy thereof, with the respective clerks of the peace for the counties in which such mains lie, and who are hereby required to receive and keep in safe custody the same; and such maps so deposited shall at all reasonable times be open to the inspection of all local authorities and consumers, and their respective agents, and they respectively may take copies of or extracts from the same; and every gas company wilfully failing to comply with any of the requirements of this Act with respect to maps, and every person having charge of such maps who shall refuse to allow any person to inspect and take copies of or extracts from such maps, shall for every such offence forfeit a sum not exceeding ten pounds.

See note to the preceding section.

Charge of inspection of map.

44. Every clerk of the peace, with whom any map shall be deposited under the provisions of this Act, may charge and take the sum of one shilling for every inspection of such map, and the further sum of two shillings and sixpence for every extract from or copy taken of such map.

See note to s. 42.

Secretary of State may direct proceedings by the Attorney-General against gas companies.

45. If and whenever it appears to the Secretary of State that any of the provisions of this Act have been violated or not complied with on the part of any gas company, or that the gas company are acting in a manner unauthorised by law, and if it appear to him that it would be for the public advantage that the gas company should be restrained from so acting, or compelled to do any act for remedying the wrongful act done by them, the Secretary of State may certify the same in writing to her Majesty's Attorney-General; and thereupon he, if he be so advised, shall proceed by information, bill, or action, or other such proceeding, at law or in equity, as the case requires, to restrain the wrongful acting or to compel the doing of the acts for remedying the wrongful acts; provided always, that the Secretary of State shall not give the certificate at a period exceeding one year after the committing of the offence specified in the certificate.

The duties of the Secretary of State under this Act are transferred to the Board of Trade (see *ante*, pp. 272, 273).

As to the powers of the Attorney-General at common law in regard to the matters referred to in this section, see the notes to s. 1 of the Act of 1847, *ante*, pp. 147 *et seq.*

In *Attorney-General* v. *Gaslight and Coke Co.* (1877), 7 Ch. D. 217, it was held that the company were not justified in causing a nuisance, even though the gas could not be made of the required purity without so doing (see *ante*, p. 198).

Recovery and application of penalties.

46. Every penalty imposed by this Act, the recovery and application of which is not otherwise specially provided for by this Act, shall be recovered on summary conviction before a magistrate, and be enforced, accounted for, and paid to the receiver of the metropolitan police

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district, and shall be apportioned in the same manner as penalties or fines, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are by the Act of the third year of her present Majesty, for regulating police courts in the metropolis, directed to be recovered, enforced, accounted for, paid, and applied; and every order or conviction of any magistrate in respect of any such penalty shall be subject to the like appeal, and upon the same terms, as is by that Act provided in respect of any order or conviction of any magistrate; and every magistrate by whom any order of conviction is made under this Act shall have the same power of binding over the witnesses examined, and the witnesses shall be entitled to the same allowance of expenses as they would be entitled to in case the order, conviction, and appeal were made under that Act.

The Act referred to is the 2 & 3 Vict. c. 71. See the Metropolitan Police Guide, by Archibald, Greenhalgh and Roberts, in which all the Acts relating to the metropolitan police are collected.

See s. 20 of the Act of 1880, *post*, p. 337, whereby forfeitures under that Act are to be recovered as if they were penalties under the Act of 1860.

Jurisdiction of magistrates for purposes of Act.

47. Every magistrate shall, for the purposes of this Act, have full jurisdiction and full powers and authorities over the parties respectively, and with respect to making orders on the parties respectively, and otherwise, and as to costs, and may issue every such summons, warrant, and other process, and may take such other proceedings as he thinks requisite; and the service of any summons, notice, order, or other process in the matter on such person, or in such manner as a magistrate directs, shall be good service thereof; and every magistrate may proceed singly in the execution of this Act in such manner as he thinks proper.

For the protection of water companies.

48. Nothing in this Act contained shall extend or be construed to extend to authorise or empower any gas company to interfere with or abridge any of the rights or privileges of any company established for the supply of water to the inhabitants of any parish or place within the metropolis; and every gas company shall be answerable for any damage, spoil, injury, or mischief which shall be done to any of the pipes, works, or property of any such water company, or which shall or may be sustained by such water company by reason or in consequence of any act, matter, or thing to be done or executed by such gas company, or any of their servants, agents, or workmen.

For laying pipes to convey gas.

49. Whenever any gas company, or their servants, agents or workmen, shall dig or sink any trench for laying any new mains or pipes, other than service pipes, for the conveyance of gas, or other apparatus, near to which any pipe belonging to any water company for conveying water, or any branch or service pipe for the supply of water to any dwelling-house or buildings, shall be laid, such gas company, their servants, agents, or workmen, shall give four hours previous notice thereof in writing to the manager or chief clerk, or secretary or engineer, of such water company, such notice to be delivered at the

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principal office of the company between the hours of ten in the morning and four in the afternoon, and shall, under the inspection of the manager or chief clerk, secretary or engineer for the time being of such water company, protect and secure every such water pipe from any injury, and shall also repair any damage that shall be done to such pipe; and in default of repairing such damage the gas company shall for each such default forfeit and pay to the secretary for the time being of such water company, for the use of the said water company, any sum not exceeding five pounds, and also the costs and expenses which shall have been incurred by the said water company in protecting and securing any such water pipe, or in repairing or making good any injury that may have been done thereto by the means aforesaid; such costs and expenses to be ascertained by any justice, and to be recovered in the same manner as any expenses or penalty under this Act may be recovered.

The Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), requires notice to be given by companies, etc., to the road authorities before taking up the pavement, surface or soil of any street (s. 109). Provision is also made for supervision and reinstatement under penalties (ss. 110, 111). The road authority may direct pavements injured by water or gas pipes to be repaired by the company under penalty (s. 112). Company opening the ground to repair a pipe discovered to belong to another company, may give notice to such company and be reimbursed expenses (s. 113). Power of road authority to reinstate (ss. 114, 115). Further as to reinstatement see the Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102), s. 84. Sect. 54, *infra*, p. 290, gives a power of appeal to the Board of Trade in case of refusal or delay in consenting to gas companies laying pipes, etc.

Subways.

The Metropolis Subways Act, 1868 (31 & 32 Vict. c. lxxx.), enabled the Metropolitan Board of Works to require gas and water pipes to be laid in certain subways constructed under certain scheduled Acts such as the the Embankment Acts and required the Board so far as space will admit and without favour or preference to allow pipes to be laid in a subway. By the London County Council (Subway) Act, 1893 (56 & 57 Vict. c. ccii.), further powers are conferred, especially with regard to removal of pipes into subways; the cesser of power to break up streets in which there are subways; the making of a charge for the use of subways; the making of byelaws; and the settlement by arbitration of disputes between the county council and any company. See Byelaws dated December 10th, 1895. In later Improvement Acts of the London County Council, this Act of 1893 is made to apply to subways authorised by those Acts, *e.g.*, the London County Council (General Powers) Act, 1899 (62 & 63 Vict. c. ccxxxvii.), s. 33. See also the City of London (Various Powers) Act, 1900 (63 & 64 Vict. c. ccxxviii.), which authorises subways. As to subways constructed prior to the passing of the City of London (Various Powers) Act, 1900, see Regulations adopted by Corporation of London dated July 10th, 1902, and for a list of their subways within the city, see the same document. As to subways constructed under the provisions of the City of London (Various Powers) Act, 1900, Part V., with respect to public service works authorised to be constructed under that Act, see byelaws made by the Corporation of London dated July 10th, 1902. The London Hydraulic Company are not a "water company" within the Act of 1893, so as to entitle them to the lower rate of charge (*London C. C.* v. *London Hydraulic Co.* (1898), 62 J. P. 229). See now the London County Council Improvements Act, 1899 (62 & 63 Vict. c. cclxvi.), s. 28, which provides that for the purposes of the application of the Act of 1893 to any subway to be constructed under the powers of that Act, the London Hydraulic Power Company shall be deemed to be a water company. By that Act the London County Council were empowered to construct subways under the new street authorised by that Act from Holborn to the Strand. By the London County Council (Subways and Tramways) Act,

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NOTE.

1902 (2 Edw. 7, c. ccxviii.), the London County Council were authorised to extend the subway from Southampton Row, Bloomsbury, to the Victoria Embankment at the southern end of Savoy Street. As to the scale of fees to be paid for the use of the subways, see a Report of the Highways Committee of the London County Council, Jl. of G. L., March 25th, 1902, p. 782.

Mode of laying pipes.

50. All pipes hereafter to be laid by any gas company for the conveyance of gas shall be laid at the greatest practicable distance from the nearest part of any pipe then laid down by or by order of any water company for the conveyance of water, and wherever the width of the carriageway or footpath will allow thereof, shall be laid at the distance of four feet at least from the nearest part of any such water pipe, unless in cases where it shall be unavoidably necessary to lay the gas pipe across or nearer to any water pipe, in which case the said gas pipe shall, wherever practicable, be laid over and above the said water pipe at the greatest practicable distance therefrom, and shall form therewith a right angle, or as near thereto as the situation will admit; and in every such case the said gas pipe so crossing the said water pipe shall be at least nine feet in length, so that no joint of any gas pipe shall be nearer to any water pipe than four feet at the least, where the width of the road, street, square, market place, lane, alley, passage, court, or other place will admit; and every such gas pipe so crossing the water pipe shall, for the whole length thereof, be sufficiently bedded in with good sound clay or other fit materials of a proper consistence, and well worked and rammed into the trench all round the said gas pipe; and in laying down any such gas pipe the gas company shall use such joints as are for the time being of the most improved description for preventing the leakage of gas, and shall in no case join two or more gas pipes together previous to their being laid in the trench, but shall lay each pipe as near as may be in its place in the trench, and shall in such trench properly form the jointing with the other pipes to be added thereto with proper and sufficient materials, and shall also, wherever practicable, lay and well and sufficiently bed each joint of the main gas pipes and also the joints or screws of the branch or service gas pipes connecting with the main gas pipes, and also the joints of the service or branch pipes for conveying the gas from the main gas pipes to the houses and other buildings, and all other joints, inlets, apertures, or openings which are or shall or may be made in any of the main gas pipes belonging to the gas company, in such manner and of such material as shall, as far as reasonably practicable, prevent leakage.

To prevent further contamination of water by gas.

51. Whenever the water which shall be supplied by any water company shall be contaminated or affected in any way whatsoever by the gas of any gas company, such gas company shall, within twenty-four hours next after notice thereof in writing, signed by any one of the directors or by the secretary for the time being of such water company, or by any person using the water of such water company, and left at the office of such gas company, cause measures to be taken effectually to prevent such gas from contaminating or

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affecting the water of such water company; and in case such gas company shall not within forty-eight hours next after any such notice so left as aforesaid use all reasonable means to effectually remove the cause of such complaint, and prevent all such contamination whereof notice shall be given as aforesaid, then and in every such case such gas company shall on each complaint whereof notice shall be given as aforesaid forfeit and pay to the secretary of such water company, for the use of such water company, the sum not exceeding ten pounds for each day during which the water supplied by such water company shall remain contaminated or affected by the gas of such gas company; and every such penalty or forfeiture may be recovered for the use of such water company in the same manner as any other penalty or forfeiture imposed by this Act may be levied and recovered.

See further the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), ss. 52, 53, imposing penalties for causing water to be fouled by gas washings, etc.

For ascertaining if the water is contaminated.

52. And whereas it may become a question upon such complaint as aforesaid whether or not the water supplied by any water company within the metropolis be contaminated or affected by the gas of the gas company: Be it enacted, that in every such case it shall be lawful for any such water company to dig to and about and to search and examine the mains, pipes, conduits, and apparatus of the gas company adjacent to the pipes of such water company for the purpose of ascertaining whether or not such contamination proceed or be occasioned by the gas of such gas company, giving twenty-four hours previous notice in writing, signed by one of the directors or by the secretary for the time being of such water company, and left at the head office of such gas company, of the intention of such water company so to dig, search, and examine as aforesaid, and of the time and place or places when and where such digging, search, and examination is intended to be made; and if it shall appear that the said water has been contaminated, and that there has been any escape of gas whereby such contamination has been produced, then and in every such case the costs and expenses of the said digging, search, and examination, and of the repair of the street, road, or place which shall be taken up or disturbed, shall be borne and paid by such gas company; which costs and expenses shall be ascertained and determined if necessary by any justice, and may be levied and recovered in the same manner as any penalty or forfeiture imposed by this Act may be levied and recovered: Provided always, that if upon such examination it shall appear that such contamination has not arisen from any escape of gas from any of the mains, pipes, or conduits of the gas company to which such notice shall have been given, then and in every such case the water company by whom or on whose behalf such examination and search shall have been made shall bear and pay all the costs, charges, and expenses of and incident to such examination and search, and shall also make good to such gas company any damage which may be occasioned to their mains, pipes, conduits, or apparatus by such

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See *Attorney-General* v. *Gaslight and Coke Co.*, cited *ante*, p. 198.

Appropriation of penalties in the city of London.

53. All penalties or sums of money ordered and adjudged within the city of London and the liberties thereof to be paid under this Act, and not otherwise appropriated, shall be payable to the chamberlain of the city of London, in aid of the expenses of the police of the said city.

See s. 20 of the Act of 1880, *post*, p. 337.

Saving rights of Metropolitan Board of Works, vestries and others.

54. Nothing in this Act contained shall avoid, prejudice, or impair any of the powers now exercised by or vested in the Metropolitan Board of Works, or in the commissioners of sewers of the city of London and the liberties thereof, or any powers now vested in any local authority within the metropolis, or any powers now exercised or possessed in respect of the manufacture or supply of gas within the metropolis by any railway company, or by any other person or persons making or supplying gas for his or their own use, and not making or supplying gas to the public as a trade or business: Provided, that if the said local authority shall refuse or delay their consent to any company to lay down mains or pipes in accordance with the provisions of this Act, it shall be lawful for the said secretary of state under his hand to authorise the same to be laid down without such consent; and after the date of the application by such company to the said secretary of state for such consent no penalty shall be incurred by any default of such company, so far as it is occasioned by such refusal only.

The effect of this section is to protect the rights of companies or persons who previously to the passing of the Act, manufactured and supplied gas to others than the "public" (*Imperial Gaslight and Coke Co.* v. *West London Junction Gas Co.* (1867), 15 L. T. (N.S.) 66; affirmed W. N. (1868), 1; 18 L. T. 900 n.).

See cases cited under s. 6, *ante*, p. 278. The powers, duties, and liabilities of the Metropolitan Board of Works are transferred to the London County Council by the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 40 (8). Vestries and District Boards have been superseded by Metropolitan Borough Councils (see London Government Act, 1899, s. 4); and the Commissioners of Sewers have been superseded by the Common Council (see City of London Sewers Act, 1897, s. 7).

The duties of the Secretary of State under this Act are now transferred to the Board of Trade. See *ante*, pp. 272, 273.

For the purposes of the enactment contained in the proviso to the section the Board of Trade have power to appoint someone to hold an inquiry under the Board of Trade Arbitrations, etc., Act, 1874 (37 & 38 Vict. c. 40).

Saving general jurisdiction of courts of law and equity.

55. Provided, that no special remedy or provision for giving relief to any person given by this Act shall prejudice or diminish the general jurisdiction of any of her Majesty's superior courts of law or equity over or with respect to the acts or defaults in respect of which the special remedies or provisions are so given.

56. [*Expenses of Act.*]

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Repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

Expenditure of local authorities under this Act.

57. All the expenditure from time to time made or incurred by any local authority under the authority of this Act, may and shall be defrayed by the local authority out of any rate raised under the provisions of the Act of the session of the eighteenth and nineteenth years of her present Majesty, chapter one hundred and twenty, for the local management of the metropolis.

The Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), here referred to, has been amended by many later Acts. All of these Acts may now be referred to as the Metropolis Management Acts, 1855 to 1893 (Short Titles Act, 1896 (59 & 60 Vict. c. 14)).

SCHEDULE to which the Fifth Section of the foregoing Act refers.*

Name of Gas Company.	Special Act or Instrument of Incorporation.	District.
The Crystal Palace District Gas Company.	The Crystal Palace District Gas Company's Act, 1858.	The district defined by their said special Act.
The Woolwich, Plumstead, and Charlton Consumers Gas Company.	The Woolwich, Plumstead, and Charlton Consumers Gas Act, 1855.	The district defined by their said special Act.
The Woolwich Equitable Gaslight and Coke Company.	The Woolwich Equitable Gas Company's Act, 1855.	The district defined by their said special Act.
The Wandsworth and Putney Gaslight and Coke Company.	The Wandsworth and Putney Gas Act, 1856.	The district defined by their said special Act.
The Brentford Gas Company.	The Brentford Gas Act, 1858.	The district now actually supplied by the company.
The Victoria Docks Gas Company.	The Victoria Docks Gas Act, 1857.	The district defined by their said special Act.
The Eltham Gaslight and Coke Company, Limited.	Articles of Association under the Joint Stock Company's Act, 1856.	The parish of Eltham.
The West Ham Gas Company.	The West Ham Gas Company's Act, 1856.	The district defined by their said special Act.
Mitcham, Merton, and Tooting Gas Company.	Articles of Association under 7 & 8 Victoria, cap. 110.	The parishes and villages of and adjacent to Mitcham, Merton, and Tooting.

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* The companies named in the schedule are by s. 5 exempted from the Act of 1860. Of these the two Woolwich companies have become amalgamated with the South Metropolitan Company, and the Victoria Docks Company with the Gaslight and Coke Company. By their Act of 1893, the Crystal Palace District Gas Company are authorised to amalgamate with the South Metropolitan Company. See *ante*, p. 274.

METROPOLIS GAS ACT, 1861.

(24 & 25 VICT. C. 79.)

An Act to amend the Metropolis Gas Act. [6th August, 1861.]

Preamble repealed by Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19). The short title, as above, is authorised by the Short Titles Act, 1896 (59 & 60 Vict. c. 14).

Powers conferred on justices of the peace by 22 & 23 Vict. c. 66, as amended by 23 & 24 Vict. c. 146, in so far as relates to the metropolis, transferred to the Metropolitan Board of Works.

1. All powers conferred on the justices of the peace of any county in general or quarter sessions assembled, by the Act passed in the twenty-second and twenty-third years of the reign of her present Majesty, chapter sixty-six, intituled "An Act for regulating measures used in sales of gas," as amended by an Act passed in the session of the twenty-third and twenty-fourth years of the reign of her present Majesty, chapter one hundred and forty-six, and intituled "An Act to amend the Act for regulating measures used in sales of gas," shall, in so far as relates to the metropolis, as defined by an Act passed in the session holden in the eighteenth and nineteenth years of her present Majesty, chapter one hundred and twenty, and intituled "An Act for the better local management of the metropolis," be transferred and vested in the Metropolitan Board of Works; and so many of the said powers as are conferred by section four of the said Act of the twenty-second and twenty-third years of the reign of her present Majesty shall be exercised by such board . . . from time to time . . . as in the said Act mentioned; and all expenses incurred by the said board in pursuance of this Act shall be defrayed by them out of rates leviable by them within their jurisdiction exclusive of the city of London.

Certain words omitted from this section are repealed by Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

Powers of Metropolitan Board of Works transferred to the London County Council by the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 40 (8).

Section 4 of the Act of 22 & 23 Vict. c. 66 above referred to is set out at p. 260.

2. [*So much of s.* 1 *of Sale of Gas Act,* 1860 (23 *&* 24 *Vict. c.* 146), *as respects the metropolis repealed.*]

Repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66). See note to Sale of Gas Act, 1860, *ante*, p. 270.

METROPOLIS GAS (PREPAYMENT METER) ACT, 1900.*

(63 & 64 Vict. c. ccLXXII.)

An Act for regulating the Charges to be made by the Gas Light and Coke the South Metropolitan Gas and the Commercial Gas Companies in the Administrative County of London in respect of gas supplied by means of prepayment meters.

[6th August, 1900.]

Whereas the greater part of the administrative county of London is supplied with gas by the Gas Light and Coke Company the South Metropolitan Gas Company and the Commercial Gas Company in their respective districts:

And whereas the price which the said companies may charge for gas is regulated under the provisions of divers Acts of Parliament:

And whereas a system has been widely adopted by the said companies by which prepayment meters and other fittings are supplied by the companies to consumers and the consumers so supplied pay from time to time to the companies sums which include both the price of gas and a charge in respect of the supply of such meters and other fittings:

And whereas it is expedient that the charges to be made by the companies in respect of gas supplied by means of such meters and fittings should be regulated and the amount of such charges stated to the persons who pay them:

And whereas the objects of this Act cannot be attained without the authority of Parliament:

May it therefore please your Majesty that it may be enacted and be it enacted by the Queen's most excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same as follows:—

1. This Act may be cited for all purposes as the Metropolis Gas (Prepayment Meter) Act, 1900. Short title.

2. In this Act— Interpretation.

"The council" means the London County Council;

"The corporation" means the mayor and commonalty and citizens of the city of London;

The expression "the companies" means the Gas Light and Coke

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* This Act is inserted in this place, rather than in its chronological order, so as to keep together all the Acts relating generally to metropolitan gas.

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Company the Commercial Gas Company and the South Metropolitan Gas Company and the expression "the company" means each of the said companies ;

The word "fittings" means pipes, burners, stoves and other fittings used in connexion with the consumption of gas supplied by means of prepayment meters ;

The expression "prepayment meter" means any meter or appliance by which the quantity of gas supplied is regulated according to the amount of money prepaid therefor.

Charges for gas.

3. The companies respectively shall not charge for any gas supplied through a prepayment meter any greater charge rate or rent than the Companies are respectively entitled by law to charge for gas supplied to private consumers through any other kind of meter or by any other method of supply.

Charges for hire of prepayment meters.

4. The Companies shall not charge for the hire of any prepayment meter and fittings to be used therewith any sum other than a sum of money calculated according to the quantity of gas supplied through such prepayment meter and the maximum sum to be so charged shall be at the rate of tenpence per one thousand cubic feet supplied in manner aforesaid such sum to include the hire of one meter and the fittings used therewith.

The said charge shall include the providing letting fixing repairing and maintenance of the meter and fittings and the cost of collection inspection and any other cost incurred by the Company in connexion with the meter and fittings.

Revision of rate.

5. The rate fixed by the last preceding section shall be open to revision by the Board of Trade in manner following (that is to say) :—

If at any time after the expiration of seven years from the date of this Act or from the date of any inquiry under this section any of the Companies or the council or the corporation request the Board of Trade in writing to revise the said rate the Board of Trade shall appoint a competent and impartial arbitrator who shall hold an inquiry and fix a maximum rate to be substituted for the rate aforesaid : Provided that the Board of Trade may at any time if they think fit at such request put into operation the provisions of this section :

At least twenty-eight days before the holding any inquiry under this Act the Board of Trade shall give to each of the Companies to the council and to the corporation notice of such inquiry and of the time and place thereof and each of the Companies the council and the corporation shall be entitled to attend and to be heard at such inquiry.

Form of receipt.

6. The Company shall in collecting any money for gas supplied by means of prepayment meters give a receipt for the same in a form which shall show clearly the rate per one thousand cubic feet charged for gas and in addition the rate in respect of meters and fittings charged therewith under this Act.

Maximum charge for hire of meters without fittings.

7. The maximum charge for the hire of a prepayment meter without fittings shall be at the rate of ten per centum per annum on the cost of the meter to the Companies respectively and the Companies Acts respectively applicable to ordinary meters shall so far as applicable apply within the Companies respective districts to prepayment meters.

Costs of Act.

8. The costs charges and expenses preliminary to and of and incidental to the preparing applying for obtaining and passing of this Act shall be defrayed as payments for general county purposes within the meaning of the Local Government Act, 1888.

LONDON GAS ACT, 1905.*

(5 EDW. 7, C. CLV.)

An Act to amend the Acts relating to the Supply of Gas in London and to make further Provisions with reference thereto.

[4th August, 1905.]

WHEREAS the Gas Light and Coke Company the South Metropolitan Gas Company, and the Commercial Gas Company have been respectively authorised to supply gas within several districts within the administrative county of London, and various Acts of Parliament have from time to time been passed containing provisions with respect to such supply :

And whereas the mayor, aldermen, and commons of the city of London in relation to any place within the city of London and the liberties thereof and the Metropolitan Board of Works in relation to any other place within the limits of the metropolis as defined by the Metropolis Management Act 1855, are by the Gas Light and Coke and other Gas Companies Acts Amendment Act 1880 (in this Act referred to as "the Act of 1880") declared to be the controlling authorities within the meaning of the said Act and powers were thereby conferred upon the mayor aldermen and commons of the city of London and the Metropolitan Board of Works with respect to the enforcement of the provisions of the said Act and various Acts relating to the said companies :

And whereas by the Local Government Act 1888 the powers duties and liabilities of the Metropolitan Board of Works were transferred to the London County Council :

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* This Act is inserted in this place, rather than in its chronological order, so as to keep together all the Acts relating generally to metropolitan gas. The Acts inserted after this Act are all special Acts.

And whereas it is expedient that certain provisions of the Act of 1880 and of other Acts relating to the said companies with respect to the testing for impurity of the gas supplied by the companies should be relaxed, and that the said Acts should be amended in other particulars as provided by this Act:

And whereas certain provisions of the Metropolis Gas Act 1860 have ceased to apply to any existing gas company and it is accordingly expedient that such provisions should be repealed:

And whereas the objects aforesaid cannot be effected without the authority of Parliament:

May it therefore please Your Majesty that it may be enacted, and be it enacted by the King's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same as follows (that is to say):—

Short title and commencement of Act.

1. This Act may be cited for all purposes as the London Gas Act, 1905, and shall come into operation on the first day of January one thousand nine hundred and six.

Act of 1880 and this Act to be construed together.

2. The Act of 1880 as amended by this Act and this Act shall be read and construed together as one Act, and words and expressions to which meanings are assigned by the Act of 1880 have in this Act, unless the context otherwise requires, the same respective meanings.

As to burner for testing illuminating power.

3. The gas referees shall from time to time prescribe the burner for testing the illuminating power of the gas supplied by the company, and the chimney (if any) to be used with such burner. The burner so prescribed shall be of such a pattern (not being an incandescent or similar burner) as shall be practicable for use by the consumer and the burner and the chimney (if any) shall be the most suitable for obtaining and in making the test shall be so used as to obtain from the gas when consumed at the rate of five cubic feet an hour the greatest amount of light.

Illuminating power.

4.—(1) The gas supplied by the Gas Light and Coke Company shall with respect to its illuminating power be such as to produce when consumed at the rate of five cubic feet an hour in the burner prescribed as hereinbefore provided a light equal in intensity to sixteen sperm candles of six to the pound and each consuming one hundred and twenty grains an hour.

By s. 38 of the Gas Light and Coke Company's Act, 1909 (9 Edw. 7, c. lxxxvii.), the word "fourteen" was substituted for the word "sixteen" in this sub-section.

(2) The gas supplied by the South Metropolitan Gas Company and the Commercial Gas Company respectively shall with respect to its illuminating power be such as to produce when consumed at the rate of five cubic feet an hour in the burner prescribed as hereinbefore provided a light equal in intensity to the light produced by fourteen sperm

candles of six to the pound each consuming one hundred and twenty grains an hour.

(3) If on any one day the gas supplied by the company at any testing place is of less illuminating power to an extent not exceeding one candle than it ought to be, the average of all the testings made at such testing place on that day and on the preceding day and on the following day shall be deemed to represent the illuminating power of the gas on such one day at such testing place.

As to testing for calorific power, sulphur impurities, and illuminating power, with flat-flame burner.

5.—(1) Each gas examiner shall at such places and in such manner as may be from time to time prescribed by the gas referees make testings of the gas supplied by the company for the purpose of ascertaining—

(i.) The calorific power;

(ii.) The purity as regards sulphur other than sulphuretted hydrogen; and

(iii.) The illuminating power as ascertained by means of a flat flame burner to be prescribed from time to time by the gas referees which shall be of the best available pattern.

(2) Each gas examiner shall forthwith deliver to the controlling authority to the gas referees to the chief gas examiner and to the company a report of the result of each testing conducted by him under the provisions of this section.

(3) The company shall not be liable to forfeitures in respect of any testings made under the provisions of this section.

(4) The company shall provide and maintain at any testing place such apparatus and materials as the gas referees may from time to time prescribe and certify for use for the purposes of this section and shall give to any gas examiner access to any testing place and shall afford to him all facilities for the proper execution of his duty under this section.

(5) A gas examiner shall make in accordance with this section testings at any place prescribed as hereinbefore provided on such days (exclusive of Sundays) as the controlling authority shall direct.

As to sulphuretted hydrogen.

6. The gas supplied by the company shall not exhibit any trace of sulphuretted hydrogen when tested in a mode to be from time to time prescribed and certified by the gas referees for testing and recording the presence of sulphuretted hydrogen which mode shall not be more stringent than the mode prescribed in Schedule A. of the Gasworks Clauses Act 1871 and section 15 of the Act of 1880 shall apply accordingly.

No liability to forfeiture for sulphur impurities other than sulphuretted hydrogen.

7. After the commencement of this Act the company shall not be liable to any forfeiture by reason of the presence in the gas supplied by the company of sulphur impurities other than sulphuretted hydrogen and the gas referees shall not prescribe or certify the amount of sulphur impurities other than sulphuretted hydrogen with which the gas supplied by the company shall be allowed to be charged.

As to pipes connecting mains with testing places.

8. The company shall connect each testing place with such main or mains as may be prescribed by the gas referees by means of one service pipe only which shall proceed direct from the main into the testing place and there shall be no pipe branch or tap in any way connected with such service pipe outside the testing place except that the company may provide a tap on the service pipe at a point outside and as near as practicable to the testing place for use in case of emergency only and such tap shall be sealed by or on behalf of the controlling authority as occasion may require in such manner that the tap cannot be used or turned without breaking the seal. The company shall give the controlling authority and persons authorised by them access at all reasonable times to such tap and in the event of the same having been used or turned shall forthwith notify the fact to the gas referees and to the controlling authority.

Appeal by company to chief gas examiner against prescription or certification of gas referees.

9. If the company think themselves aggrieved by any prescription or certificate of the gas referees they may in the case of an appeal in respect of a burner or a chimney prescribed by the gas referees under the provisions of this Act within three months or in any other case within one month from the making of such prescription or certificate appeal against such prescription or certificate to the chief gas examiner who after hearing the company and the gas referees and any other body or person whom he shall think fit may confirm amend vary or annul such prescription or certificate and his decision shall be final and conclusive.

Any prescription or certificate as so confirmed amended or varied shall be deemed to be the prescription or certificate of the gas referees in the matter or matters to which it relates.

Sunday testing.

10. Notwithstanding anything in the Act of 1880 or in any other Act it shall not be obligatory on the controlling authority to make on Sunday any testings of the gas supplied by the company and in any case in which the controlling authority shall not make such testings on Sunday any provisions relating to the testing of the gas supplied by the company shall be read and construed as if Saturday were as the case may be the day preceding or immediately preceding or the previous day to Monday and Monday were the day following Saturday.

Amendment of s. 12 of Act of 1880.

11. Section 12 of the Act of 1880 is hereby repealed and in lieu thereof the following provisions shall have effect (that is to say) :—

If the company think themselves aggrieved by any report of a gas examiner they may within seven days after the day on which that report is delivered to the company appeal to the chief gas examiner who may confirm amend vary or annul such report and whose decision after hearing the parties shall be final and conclusive and the chief gas examiner shall forthwith report every such decision to the controlling authority and to the company :

If in any case the company do not appeal as aforesaid or if having appealed they withdraw the appeal the report of the gas examiner shall be final and conclusive :

In the event of the company appealing to the chief gas examiner or in the event of the company withdrawing the appeal the company shall forthwith give notice of such appeal or of such withdrawal as the case may be to the controlling authority.

Further powers to chief gas examiner as to forfeitures.

12. If the chief gas examiner in giving his decision upon any appeal made to him by the company against the report of a gas examiner shall certify that the default of the company is not substantial or not due to the careless conduct of the company or their servants proceedings shall not be taken before a petty sessional court for the determination of the amount of the forfeiture to be paid by the company in respect of such default but the chief gas examiner if requested so to do by the controlling authority at the time of hearing such appeal or giving his decision thereon or at any time within six months after the date of his decision may after hearing the Council and the company determine subject to the provisions of section 14 of the Act of 1880 the amount of forfeiture to be paid by the company in respect of such default.

The amount of any forfeiture fixed by the chief gas examiner under this section shall be recoverable summarily as a civil debt from the company and appropriated in the same manner as if the amount of such forfeiture had been fixed by a petty sessional court.

As to hearing in absence of parties.

13. The chief gas examiner may give his decision upon any matter referred to him under this Act without hearing any party who shall fail or neglect to attend before him after receiving not less than seven days' notice of the time and place fixed by the chief gas examiner for hearing such matter.

Amendment of s. 12 of Act of 1880.

14. Section 18 of the Act of 1880 is hereby repealed and in lieu thereof the following provisions shall have effect (that is to say) :—

The report of a gas examiner (in cases where there is no report of the chief gas examiner) showing a case of defective illuminating power excessive impurity in or insufficient pressure of the gas supplied by the company or in cases where there is a report of the chief gas examiner showing such a case as aforesaid such last-mentioned report shall be conclusive evidence of the liability of the company to a forfeiture in respect thereof.

Penalty for neglect to comply with prescriptions of gas referees.

15. If the company neglects or refuses to comply with any lawful prescription or certificate of the gas referees or to provide or maintain any testing place apparatus or materials or any other matter or thing prescribed or certified therein the company shall be liable on summary conviction to a penalty not exceeding fifty pounds for each day during which such refusal or neglect continues:

Provided that no proceedings under this section shall be taken unless the Board of Trade shall after giving the company an opportunity of being heard consent thereto and—

(*a*) Until after the expiration of the period within which the company may under the section of this Act of which the marginal note

Sect. 15.

is "Appeal by company to chief gas examiner against prescription or certification of gas referees" appeal against the prescription or certificate; or

(*b*) If the company shall have appealed as aforesaid unless or until either such appeal is withdrawn or the chief gas examiner has given a decision thereon.

The remedy provided by this section shall be in addition to and not in derogation of any existing remedy.

Proceedings in case of forfeitures.

16. Proceedings against the company in respect of any forfeiture incurred under the Act of 1880 or this Act may be commenced at any time within six months after the date of the report of the gas examiner or after the date of the report of the chief gas examiner on appeal or in the event of the company duly appealing to the chief gas examiner and withdrawing the appeal within six months from the date of the receipt of notice of such withdrawal.

Proof of report etc. of chief gas examiner.

17. Any report or certificate of the chief gas examiner purporting to have been signed by him shall for all purposes and to all intents be primâ facie evidence of the due making and signing thereof without proof of such signature.

As to service of notices.

18. Any notice required to be given under this Act may be served by post.

Repeal of Acts.

19. The Acts specified in the first column of the schedule to this Act shall be and the same are hereby repealed to the extent specified in the second column of that schedule.

Repeal of parts of Metropolis Gas Act 1860.

20. Sections 7 to 12 25 to 34 37 40 and 41 of the Metropolis Gas Act 1860 are hereby repealed.

Costs of Act.

21. The costs charges and expenses preliminary to and of and incidental to the preparing applying for obtaining and passing of this Act shall be defrayed by the London County Council as payments for general county purposes within the meaning of the Local Government Act 1888.

The SCHEDULE referred to in the foregoing Act.

Acts.	Extent of Repeal.
The Gas Light and Coke Company Act 1876	Sections 25 33 37.
The South Metropolitan Gas Light and Coke Company's Act 1876	Sections 26 34 38.
The South Metropolitan Gas Act 1900	Section 6.
The Commercial Gas Act 1875	Sections 31 34 53.
The Commercial Gas Act 1903	The whole Act.

CITY OF LONDON GAS ACT, 1868.*

(31 & 32 VICT. C. CXXV.)

An Act to amend the Metropolis Gas Act, 1860, *and to make further Provision for regulating the Supply of Gas to the City of London; and for other purposes connected therewith.* [13th July, 1868.]

WHEREAS the city of London is now supplied with gas by the Gas Light and Coke Company, the City of London Gas Light and Coke Company, and the Great Central Gas Consumers Company, and it is expedient that the Metropolis Gas Act, 1860, be amended so far as it affects these companies, and that better provision be made respecting the supply of gas to that part of the metropolis situate within the city of London, and that for that purpose the Metropolis Gas Act, 1860 (in this Act referred to as the Act of 1860), so far as it relates to the city of London, be amended:

May it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PRELIMINARY.

1. This Act may be cited as the City of London Gas Act, 1868. Short title.

2. In this Act— Interpretation of terms.

The term "the city" means the city of London and the liberties thereof;

The term "the Commissioners of Sewers" means the Commissioners of Sewers of the city.

The term "corporation" means the mayor and commonalty and citizens of the city of London, and any powers given to them may be exercised by the mayor, aldermen, and commons in common council assembled;

The terms "companies" and "company" mean the Gas Light and Coke Company, the City of London Gas Light and Coke Company, and the Great Central Gas Consumers Company. and each of them;

The term "undertaking" includes all property and rights;

The term "half year" means a half year reckoned from the first day of January and first day of July in each year;

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* This Act of 1868 has been fully dealt with in the INTRODUCTION, *q.v.* The three companies mentioned in the preamble have long been amalgamated. This Act first provided for the appointment of gas referees. By the Gaslight and Coke Company Act, 1868 (31 & 32 Vict. c. cvi.), s. 109, this Act is made to apply to the whole district of that company.

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The term "quarter" means a quarter of a year reckoned from the first day of January, first day of April, first day of July, and first day of October in each year;

The term "day" means (except in this section) twenty-four hours reckoned from nine o'clock in the forenoon of one day to nine o'clock in the forenoon of the next following day, so much of each day as is before nine o'clock in the forenoon being reckoned as part of the immediately preceding day of the month or week;

The term "candles" means such candles as are described in section 25 of the Act of 1860;

and this Act shall be read as one with the Act of 1860.

The Common Council has now superseded the Commissioners of Sewers. See City of London Sewers Act, 1897, s. 7.

Certain sections of 23 & 24 Vict. c. 125, as in schedules to this Act repealed.

3. Such parts of the Act of 1860 as are described in the first schedule to this Act, and any part of any special Act of any company inconsistent with this Act, so far only as they respectively relate to the companies and the city, are hereby repealed as from the thirtieth day of September one thousand eight hundred and sixty-eight, and the Act of 1860 so amended shall, as to all the companies mentioned in the preamble of the said Act, be read throughout as if the Board of Trade had been inserted therein instead of her Majesty's principal Secretary of State for the Home Department.

PURCHASE OF UNDERTAKINGS.*

Power to corporation to purchase undertakings of companies.

4. At any time within three years after the passing of this Act the corporation may purchase from any company, and any company may sell so far as they supply the city, the undertaking or any part of the undertaking of any company: Provided always, that no such purchase shall be valid unless with the consent of all the companies given under their common seals.

5. [Transfer to be by Deed.]

6. [Powers of Corporation as to Manufacture and Supply.]

7. [Consideration in Form of Rentcharge.]

8. [Raising of Money for Purchase by Corporation.]

9. [Corporation to be Primarily Liable for Company's Debts unpaid.]

10. [Pending Actions, etc., against Company.]

11. [Causes of Action, etc., against Company.]

12. [Receipt of Directors a Discharge.]

13. [Application of Purchase Money.]

14. [Company's Books evidence as to Shareholders.]

15. [Documents, etc., continued as Evidence.]

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* See INTRODUCTION.

16. [Separate Accounts to be kept.]

17. [Application of Income.]

AMALGAMATION.*

Scheme by companies for amalgamation.

18. The companies may, as soon as may be after the expiration of six months from the passing of this Act, settle a scheme for the amalgamation of the companies or some of them, and shall submit the same to the Board of Trade, and such scheme shall be framed with a view to the reduction of the expenditure of the companies.

Examination of scheme by Board of Trade.

19. The Board of Trade shall give notice in the London Gazette, and by advertisement in two daily morning newspapers published in London or Middlesex, of the submission of such scheme, and shall cause copies of such notice and scheme to be delivered to the corporation, and shall receive any representations made to them by the corporation respecting the scheme, and shall consider the scheme and representations (if any), and may suggest any modifications of the scheme.

Confirmation of scheme.

20. If the companies assent to the modifications (if any) suggested by the Board of Trade, and the scheme, whether modified or not, is confirmed by order of her Majesty in council, the same shall have full effect and shall be as binding as if it had been enacted by Parliament.

Provisions for districts, compensation, etc.

21. Any scheme under this Act shall contain proper provisions respecting a re-arrangement of districts, and respecting the position of stations for the manufacture or storage of gas and other works, and respecting the mode of dealing with the capitals of the companies, and respecting a change of the name of the companies, and respecting the incorporation, name, and powers of the amalgamated company, and the vesting in them of any property and rights, and other proper provisions for the necessary incidents and consequences of amalgamation, and shall provide for proper compensation to any secretary, engineer, accountant, collector, or other salaried officer of any company, whose office or employment is abolished by or will become unnecessary under the scheme.

Provisions of scheme as to capital.

22. Provided that any scheme under this Act shall not contain any provisions that would authorise the application of share or loan capital, or any money arising from the sale of disused works or of superfluous lands, to any purposes other than those to which capital is properly applicable, or any provision for the reduction of any share capital already authorised by Parliament.

Meaning of company.

23. After any such amalgamation an amalgamated company shall be deemed to be a company within the meaning of the Act of 1860 and of this Act.

Sale of copies.

24. Each amalgamated company shall at all times keep at their principal office printed copies of the scheme relating to the company,

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* As to the extension and operation of these provisions regarding amalgamation, see INTRODUCTION.

Sect. 24. with the confirming order in council, and shall sell copies to all persons desiring to buy the same, at a reasonable rate, not exceeding sixpence for each copy. If any company fail to comply with this provisions they shall be liable to a penalty not exceeding twenty pounds, and to a further penalty not exceeding five pounds for every day during which such failure continues after the first penalty is incurred.

DIVIDENDS.

25. [*Profits of Company limited.*]

26. [*If profits exceed the Amount limited, excess to be invested and form an Insurance Fund.*]

27. [*Application of excess of Profits after ten per cent.*]

28. [*Provision for lower Rate under special Act.*]

Sections 25—28 are repealed by the Gaslight and Coke Company's Act, 1876 (39 & 40 Vict. c. ccxxv.), s. 8, which Act introduces the sliding scale.

GAS REFEREES.*

Appointment of referees.

29. The Board of Trade shall as soon as may be after the passing of this Act appoint three competent and impartial persons, one at least of them having practical knowledge and experience in the manufacture and supply of gas, who shall be called the gas referees (and who are in this Act referred to as the gas referees), and in case of a vacancy happening among them by death, resignation, or otherwise shall appoint a competent and impartial person to fill the vacancy, one at least of the three being always qualified as aforesaid.

Continuance of referees.

30. Every person appointed to be one of the gas referees shall continue in office for one year only from the date of his appointment, but shall be capable of reappointment.

Quorum, etc. of referees.

31. Two of the gas referees shall be a quorum, and at least two of the referees shall concur in every act or determination of the referees.

Certificates of referees.

32. A copy of each certificate of the gas referees required by this Act shall be sent by them to the corporation, and to each of the companies.

TESTING FOR ILLUMINATING POWER AND PURITY.

33. [*Mode and Times of Testing Illuminating Power.*]

34. [*Examination of Gasworks by Gas Referees.*]

35. [*Access to Works.*]

36. [*Certificate of Maximum and Time.*]

37. [*Modes and Times of Testing Purity.*]

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* Gas referees were afterwards authorised to be appointed in relation to the South Metropolitan Gas Company and the Commercial Gas Company by their Acts of 1869 and 1875 respectively. See more fully in INTRODUCTION.

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38. [*Mode of Measuring Gas Public Lamps.*]

39. [*Freedom from Sulphuretted Hydrogen.*]

40. [*Provision of Testing Places and Apparatus.*]

41. [*Control, etc., of Testing Places.*]

42. [*Separate Testing Place for Company.*]

43. [*Description of Burner for Testing Illuminating Power.*]

44. [*Appointment of Gas Examiner.*]

45. [*Appointment of Chief Gas Examiner.*]

46. [*Daily Testing.*]

47. [*Testing for Illuminating Power.*]

48. [*Illuminating Power for Day.*]

49. [*Representation of the Company.*]

50. [*Daily Reports and Access to Books.*]

51. [*Appeal to Chief Gas Examiner.*]

52. [*Where no Appeal, Report of Examiner Final.*]

Illuminating Power and Price.

53. [*Illuminating Power (except for Cannel Gas).*]

54. [*Maximum Price (except for Cannel Gas).*]

55. [*Power for Reduction of Power and Price by Consent.*]

56. [*Price of Cannel Gas.*]

57. [*Application for Revision.*]

58. [*Commissioners may Inspect Books and Works of Company.*]

59. [*Evidence, etc.*]

60. [*Penalty for Disobedience, etc.*]

61. [*Penalty on Persons giving False Evidence.*]

62. [*Protection of Commissioners.*]

63. [*Inquiry of Commissioners.*]

64. [*Power to obtain Assistance, etc.*]

65. [*Majority to Bind.*]

66. [*Power and Price to be fixed for Year.*]

67. [*If no Application, Power and Price to Remain.*]

68. [*Rules for fixing Power and Price.*]

69. [*Costs of Revision.*]

70. [*Companies and Corporation may Agree as to Alteration of Price.*]

Reports of Chief Gas Examiner.

71. [*Quarterly Report of Chief Gas Examiner.*]

FORFEITURES.

72. [*Register of Gas made.*]

73. [*Forfeiture for Defect of Power.*]

74. [*Forfeiture for Excess of Impurity.*]

75. [*Saving for unavoidable Accident, etc.*]

76. [*Evidence of Liability to Forfeiture.*]

77. [*Forfeitures to be borne by Dividends.*]

ACCOUNTS.

78. [*Auditor of Accounts.*]

79. [*Ascertainment of Capital of Companies.*]

80. [*Form of Accounts.*]

81. [*Periodical Audit.*]

82. [*Facilities for Audit.*]

83. [*Arbitration between Auditor and Company.*]

MISCELLANEOUS AMENDMENTS.

84. [*Pressure of Gas.*]

The sections 33—84 are repealed by the Gaslight and Coke Company's Act, 1876 (39 & 40 Vict. c. ccxxv.), s. 8, by which Act other enactments are substituted. See further the Gaslight and Coke and other Gas Companies Acts, Amendment Act, 1880, *post*, p. 333, and the London Gas Act, 1905, *ante*, p. 295.

Governors for street lamps.

85. A company supplying gas to public lamps, or the Commissioners of Sewers, may at their own expense cause to be affixed to each lamp the instrument known as a street lamp governor, and the Commissioners of Sewers or the company (as the case requires) shall be entitled to have access thereto for the purpose of examining the same; and in case any dispute arises between the company and the Commissioners of Sewers with reference to the affixing, operation, or inspection of governors, the same shall be referred to the determination of the chief gas examiner, whose decision shall be final and conclusive.

Limit of charge for gas supplied to public lamps.

86. A Company shall not charge a higher price per one thousand cubic feet for gas supplied to the Commissioners of Sewers than the lowest price per one thousand cubic feet charged by them at the same time to any private customer, but if the company contend, as against the Commissioners of Sewers, that there are special circumstances justifying them in charging a lower price to any other customer, the question shall be determined by arbitration whether or not such lower price shall be taken as the standard for the price to be charged to the Commissioners of Sewers, and the price fixed by such arbitration shall continue for two years at least.

87. Section thirty-eight of the Act of 1860 shall be read as if the Lands Clauses Consolidation Act, 1845, were therein mentioned instead of the Companies Clauses Consolidation Act, 1845.

Settlement of differences by arbitration.

Company to make a map of mains and appliances beneath the public ways.

88. Each Company shall, within six months of the passing of this Act, make a map of the district within which their mains or pipes may be laid to a scale of not less than five feet to a mile, and shall show thereupon the lines, sizes, and depth beneath the surface of all their existing mains or pipes, excepting the service pipes to separate houses, and the positions of all valves, syphons, and other appliances, and shall once in every year, on or before the thirty-first day of December, correct such map and make such alterations in or additions thereto as may be necessary to show correctly, as near as may be, the lines, positions, sizes, and depths of the various pipes, and also their appliances, and shall keep such map in the principal office of the company, and the same shall be open to the inspection of the Commissioners of Sewers and their officers, and to the public generally, who may inspect or take copies of or extracts of the same; and the company may charge and take the sum of one shilling for each inspection of such map, and the further sum of two shillings and sixpence for each extract, tracing, or copy taken of such map.

See Metropolis Gas Act, 1860, ss. 42—44, *ante*, pp. 284, 285, and Commercial Gas Act, 1875, s. 70, *post*, p. 317. *Cf.* ss. 19—21, of the Waterworks Clauses Act, 1847, *post*, pp. 447, 448.

There is no corresponding section in the Gasworks Clauses Acts, 1847 and 1871.

Penalty on company for default.

89. If the company fail to comply with any requirements of this Act in respect of such map they shall for every such offence forfeit and pay any sum which two justices of the peace may adjudge, not exceeding the sum of fifty pounds.

Deposit in case of dispute.

90. Where a dispute arises between a company and one of their customers respecting any payment to be made to the company, if the customer deposits with the company, by way of security, the amount claimed by them, it shall not be lawful for the company to discontinue a supply of gas to the customer by reason of the dispute; but nothing herein shall authorise a company, where such deposit is not made, to discontinue a supply of gas to the customer in any case in which they would not have been authorised to do so if this Act had not been passed.

Expenses of Execution of Act.

91. [*Remuneration and Expenses of Gas Referees, etc.*]

Repealed by the Gaslight and Coke Company's Act, 1876 (39 & 40 Vict. c. ccxxv.), s. 8.

92. [*Remuneration and Expenses of Gas Examiners.*]

Repealed by the Gaslight and Coke Company's Act, 1876 (39 & 40 Vict. c. ccxxv.), s. 8. The remuneration and expenses of the chief gas examiner and auditor and gas examiners is now provided for by the City of London (Various Powers) Act, 1877 (40 Vict. c. vii.), ss. 15, 16, so far as the Gaslight and Coke Company is concerned.

Costs.

Expenses of Act.

93. All costs, charges, and expenses incidental to the preparing applying for, obtaining, and passing of this Act shall be paid by the corporation and the Companies in equal moieties as and to whom the Board of Trade direct; and the moiety of the Companies shall be paid in proportion to the amount of their paid-up share capital, but the paid-up capital of the Gas Light and Coke Company shall for this purpose be taken to be the capital apportioned to their district within the city under section seventy-nine of this Act.

The SCHEDULE to which the foregoing Act refers.

Parts of Metropolis Gas Act, 1860, *so far as they relate to the City, repealed.*

Section two, as far as it incorporates the provisions of the Gasworks Clauses Act, 1847, with respect to the amount of profit to be received by the Undertakers from the gasworks carried on for their benefit, or imposes any restrictions on a company in respect of the rate of dividend.

Sections seven to twelve, both inclusive.

Sections twenty-five to thirty-four, both inclusive.

Section thirty-seven.

Sections forty and forty-one.

COMMERCIAL GAS ACT, 1875.

(38 & 39 Vict. c. cc.)

An Act for conferring further powers on the Commercial Gas Company and for the Amalgamation with that Company of the Ratcliff Gaslight and Coke Company and for other purposes.

[11th August, 1875.]

10 & 11 Vict. c. liii.
15 & 16 Vict. c. clv.

Whereas the Commercial Gas Company (in this Act called the Commercial Company) are incorporated and empowered by the Commercial Gas Acts 1847 and 1852 or one of them for making and supplying and accordingly are making and supplying gas in a district in the County of Middlesex defined by or under the Metropolis Gas Act 1860:

And whereas the capital of the Commercial Company consists of the sum of four hundred and fifty thousand pounds stock being the total amount authorised to be raised by them by shares or stock and by conversion of loan into share capital and they have now no loan capital nor have they power to raise any loan capital:

And whereas it is expedient that further powers with respect to the purchase of land by agreement and the erection and improvement of works and the raising of share and loan capital be conferred on the Commercial Company:

And whereas the Ratcliff Gaslight and Coke Company (in this Act called the Ratcliff Company) are incorporated and empowered by an Act passed in the session of Parliament held in the year one thousand eight hundred and twenty-three chapter ninety-eight and by the Ratcliff Gas Act 1855 or one of them for making and supplying and accordingly are making and supplying gas in a district adjoining to the district of the Commercial Company also defined by or under the Metropolis Gas Act 1860:

4 Geo. 4 c. xcviii

And whereas the amalgamation of the Ratcliff Company with the Commercial Company would be of great public advantage and the same has been agreed on by the two companies and it is expedient that provision be made for giving full effect to the agreement and respecting the constitution and powers of the amalgamated company:

And whereas the objects aforesaid cannot be attained without the authority of Parliament:

May it therefore please your Majesty, that it may be enacted and be it enacted by the Queen's most Excellent Majesty by and with the advice and consent of the lords spiritual and temporal and commons in this present Parliament assembled and by the authority of the same as follows (that is to say):

1. [Short title.]

2. [Commencement of Act.]

Modification of Gas Act, 1860.

3. The following parts of the Metropolis Gas Act, 1860, shall not apply to the Commercial Company (that is to say),

Section two, as far as it incorporates the provisions of the Gasworks Clauses Act, 1847, with respect to the amount of profit to be received by the undertakers from the gasworks carried on for their benefit, or imposes any restriction on the company in respect of the rate of dividend;

So much of section four as defines the meaning of the words common gas and cannel gas;

Sections seven to twelve, both inclusive;

Sections twenty-five to thirty-four, both inclusive;

Sections thirty-seven and thirty-eight;

Sections forty to forty-four, both inclusive;

and such provisions of the Metropolis Gas Act, 1860, as apply to the Commercial Company shall be read and have effect as if the Board of Trade were named therein instead of one of her Majesty's principal Secretaries of State; and the Gasworks Clauses Act, 1871, shall not extend or apply to the Commercial Company.

4. [Repeal of parts of Commercial Act of 1852.]

Incorporation of general Acts.

5. The following enactments (as far as they are applicable for the purposes of, and are not varied by or inconsistent with this Act) are incorporated with and are part of this Act; (that is to say,)

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The Lands Clauses Consolidation Acts, 1845, 1860, and 1869, as far as the same relate to the taking of lands by agreement, and for that purpose the term lands in those Acts shall include easements and other interests.

The Companies Clauses Consolidation Act, 1845, so as to apply to the additional capital by this Act authorised, and with respect to the several matters following; (that is to say) the distribution of the capital of the company into shares; the transfer or transmission of shares; the payment of subscriptions and the means of enforcing the payment of calls; the forfeiture of shares for nonpayment of calls; the remedies of creditors of the company against the shareholders; the borrowing of money by the company on mortgage or bond; the conversion of the borrowed money into capital; the consolidation of the shares into stock; general meetings and dividends; the giving of notices, and the provisions to be made for affording access to the special Act; Parts I., II., and III. of the Companies Clauses Act, 1863, relating respectively to cancellation and surrender of shares, to additional capital, and to debenture stock, as amended by the Companies Clauses Act, 1869.

Interpretation of terms.

6. In this Act:—

"Metropolitan board" means the Metropolitan Board of Works.*

"Local authority" means a vestry or district board acting under the Metropolis Management Act, 1855.†

"Share" and "shareholder" include stock and stockholder.

"Half year" means a half year reckoned from the first day of January and the first day of July (each inclusive) in each year.

"Quarter" means a quarter of a year reckoned from the first day of January first day of April first day of July and first day of October (each inclusive) in each year.

"Day" means (except in this section) twenty-four hours reckoned from nine o'clock in the forenoon of one day to nine o'clock in the forenoon of the next following day so much of each day as is before nine o'clock in the forenoon being reckoned as part of the immediately preceding day of the month or week.

"Candles" means sperm candles of six to the pound burning one hundred and twenty grains an hour each.

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* The powers, duties, and liabilities of this board were transferred to the London County Council by the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 40 (8).

† Under the London Government Act, 1899 (62 & 63 Vict. c. 14), the borough councils become respectively the local authority in the place of the vestries and district boards.

7. [Power to take lands by agreement.]

8. [Power to make and maintain gasworks.]

9. [Power to make wharves, etc.]

10. [Power to stop up footpath.]

11. [Power for Lee Conservancy Board to sell parts of foreshore to Commercial Company.]

12. [Power to hold licences under letters patent.]

13. [Power to raise additional capital.]

14. [New shares or stock subject to same incidents as other shares or stock.]

15. [Shareholder not to vote where interested otherwise than as a shareholder.]

16. [Votes of shareholders.]

17. [Power to borrow.]

18. [Arrears may be enforced by appointment of a receiver.]

19. [Restrictions on issue of additional capital beyond £200,000.]

20. [Debenture stock.]

21. [Application of capital.]

Appointment of gas referees.

22. The Board of Trade shall as soon as may be after the passing of this Act appoint in relation to the Commercial Company three competent and impartial persons one at least of them having practical knowledge and experience in the manufacture and supply of gas who shall be called the gas referees (and who are in this Act referred to as the gas referees) and in case of a vacancy happening among them by death resignation or otherwise shall appoint a competent and impartial person to fill the vacancy one at least of the three being always qualified as aforesaid.

This section is in substance identical with s. 29 of the City of London Gas Act, 1868 (31 & 32 Vict. c. cxxv.). See further on this subject in the INTRODUCTION.

Continuance of referees.

23. Every person appointed to be one of the gas referees shall continue in office for one year only from the date of his appointment but shall be capable of reappointment.

Quorum, etc. of referees.

24. Two of the gas referees shall be a quorum and at least two of the gas referees shall concur in every act or determination of the gas referees.

Certificates of referees.

25. A copy of each certificate of the gas referees required by this Act shall be sent by them to the Metropolitan Board and to the Commercial Company.

The London County Council now take the place of the Metropolitan Board. See footnote, *ante*, p. 310.

Mode and times of testing illuminating power.

26. The gas referees shall subject to the provisions of this Act from time to time prescribe and certify the mode to be adopted for testing and recording the illuminating power and pressure of gas

Sect. 26. supplied by the Commercial Company and the number of the times of testing.

By the Gaslight and Coke and other Gas Companies Acts Amendment Act, 1880 (43 & 44 Vict. c. clxxxi.), s. 21 and schedule, so much of this section as relates to the pressure of the gas is repealed. See now the provisions of s. 6 of that Act as to pressure, *post*, p. 335, and the provisions of the London Gas Act, 1905, p. 297, *ante*, as to testing illuminating power.

Examination of gasworks by referees.

27. The gas referees shall with all practicable speed after their appointment and the gas referees for the time being may from time to time thereafter inspect the works of the Commercial Company and investigate the processes of manufacture carried on therein with the view of ascertaining the means adopted therein for purifying gas and for preventing nuisance and may from time to time apply all such tests as they think expedient at the works of the Commercial Company or elsewhere for ascertaining the amount of sulphur and ammonia and of compounds thereof or other impurity with which gas supplied by them is charged.

Access to works.

28. The Commercial Company shall give to the gas referees and each of them and to each of their clerks servants and workmen access to the works of the company and shall when required afford to them and each of them all facilities for the proper execution of their and his duty.

Purity of gas to be prescribed.

29. The gas referees shall from to time ascertain with what degree of purity the Commercial Company can reasonably be required to make and supply gas continuously without occasioning a nuisance to the neighbourhood in which the works are situate and shall thereupon prescribe and certify the maximum amount of impurity in each form with which gas supplied by the company should be allowed to be charged and the time from which the allowance thereof should be enforced as against the company regard being had to the necessity for any alteration of works by the company consequent on any such certificate.

Mode and times of testing purity.

30. The gas referees shall from time to time prescribe and certify the mode to be adopted for testing and recording the purity of gas supplied by the Commercial Company and the number of the times of testing such purity.

31. [*Freedom from sulphuretted hydrogen.*]

This section was repealed by s. 19 and schedule of the London Gas Act, 1905. See ss. 5—7 of that Act, *ante*, p. 297, for the substituted provisions.

Provision of testing places and apparatus.

32. The gas referees shall from time to time prescribe and certify the situation and number of the testing places and the apparatus and materials to be used therein for testing the illuminating power purity and pressure of the gas to be provided by the Commercial Company [*one such place being prescribed for every station from which gas is supplied in the district supplied from such station*] and the company shall provide and maintain such testing places and apparatus and materials accordingly.

By the Gaslight and Coke and other Gas Companies Acts Amendment Act, 1880 (43 & 44 Vict, c. clxxxi.), s. 21 and schedule, the words in italics, and so much of the section as relates to the pressure of the gas, are repealed. As to pressure, see now the provisions of ss. 6 and 16 of that Act, *post*, pp. 335, 337.

See the provisions of s. 8 of the London Gas Act, 1905, as to pipes connecting mains with testing places.

Control, etc. of testing places.

33. The prescribed testing places materials and apparatus provided by the Commercial Company shall be under the control and management of the Metropolitan Board, but the company may also have a separate testing place in the same building under their own control and management.

The London County Council now take the place of the Metropolitan Board of Works. See footnote, *ante*, p. 310.

34. [*Description of burner for testing illuminating power.*]

This section was repealed by s. 19 and schedule of the London Gas Act, 1905. See s. 3 of that Act, *ante*, p. 296, for the substituted provisions.

Appointment of gas examiner.

35. The Metropolitan Board shall as soon as may be after the commencement of this Act appoint and shall always keep appointed a competent and impartial person or persons to be a gas examiner or gas examiners for the several testing places.

See footnote, p. 310.

Appointment of chief gas examiner.

36. There shall be a chief gas examiner being a competent and impartial person from time to time appointed by and removable by the Board of Trade.

Where the chief gas examiner took evidence without notice to the company his determination and report was quashed by *certiorari* (*R.* v. *London C. C.*, *Ex parte Commercial Gas Co.* (1895), 11 T. L. R. 337). Both parties had previously concurred in this mode of acting, but the court held that that made no difference as "it was not a consensual arbitration" (*ib.*). See hereon the provisions of s. 13 of the London Gas Act, 1905, *ante*, p. 299.

37. [*Daily Testing.*]

38. [*What shall be deemed illuminating power and pressure for each day.*]

39. [*Average testings of purity.*]

40. [*Representation of company.*]

41. [*Daily reports and access to books.*]

42. [*Appeal to chief gas examiner.*]

43. [*Where no appeal, report final.*]

44. [*Quarterly report of chief gas examiner.*]

45. [*Register of gas made.*]

46. [*Forfeiture for defect of power.*]

47. [*Forfeiture for excess of impurity.*]

48. [*Forfeiture for insufficiency of pressure.*]

49. [*Saving for unavoidable accident, etc.*]

50. [*Evidence of liability to forfeiture.*]

51. [*Forfeiture to be borne by dividend.*]

Sect. 51.

NOTE.

These sections (37—51) are repealed by the Gaslight and Coke and other Gas Companies Acts Amendment Act, 1880 (43 & 44 Vict. c. clxxxi.), s. 21. Fresh enactments were substituted by that Act. See pp. 335—337, but see now the provisions of the London Gas Act, 1905, *ante*, p. 295.

52. [*Illuminating power.*]

The illuminating power was reduced to 14 candles by the Commercial Gas Act, 1902, and after a temporary modification of s. 52, *supra*, made by the Commercial Gas Act, 1903, the section was repealed by s. 19 and schedule of the London Gas Act, 1905. See the substituted provisions in s. 4 of that Act, *ante*, p. 296.

53. [*Fixing maximum price of gas with sliding scale as to dividend.*]

This section was repealed by s. 12 (3) of the Commercial Gas Act, 1902. See the substituted provisions of s. 12 (1), (2), of that Act, *post*, p. 344.

Auditor of accounts.

54. There shall be an auditor of the accounts of the Commercial Company being a competent and impartial person from time to time appointed by and removable by the Board of Trade (which auditor is in this Act referred to as the auditor).

Ascertainment of capital of company.

55. The auditor shall with all practicable speed after the commencement of this Act investigate the accounts of the Commercial Company and ascertain and certify the amount of their capital distinguishing share from loan capital and shall from time to time as new capital shall be expended in like manner ascertain and certify such new capital.

Form of accounts.

56. The auditor shall from time to time prescribe an uniform form of accounts to be kept by the Commercial Company.

Periodical audit.

57. The auditor shall during every half year as and when he thinks fit inspect the accounts of the company and audit the same and if he finds the same correct he shall certify the same but if he finds the accounts incorrect in principle or in detail he shall require the Commercial Company to correct the same in such manner as he thinks right and he may if he thinks fit grant a conditional certificate so as to authorise the payment of a dividend subject to correction if need be and except in the case of a conditional certificate a dividend shall not in any case be declared until the accounts are certified by the auditor. The accounts as and when certified shall be forthwith laid before both Houses of Parliament if Parliament be then sitting and if Parliament be not then sitting within seven days after the commencement of the then next session of Parliament.

Facilities for auditor.

58. The Commercial Company shall give to the auditor his clerks and assistants access to the books and documents of the company and shall when required furnish to him or them all vouchers and information requisite for the purposes of the audit and shall afford to him and them all facilities for the proper execution of his and their duty.

Power for Metropolitan

59. A copy of the accounts before the auditor shall certify the same shall be forwarded to the Metropolitan Board and the Metropolitan Board may in case they shall so desire appear before the auditor and before certifying the accounts the auditor shall if required hear the Metropolitan Board and the company with respect to any matter relating to such audit or accounts.

Board to appear before auditor.

See note to s. 60.

60. If the Metropolitan Board or the Commercial Company think themselves aggrieved by any act, determination or omission of the auditor the matter in difference shall be referred to the determination of an arbitrator to be agreed on between them and the auditor or in default of agreement to be appointed on the application of either party by the Lord Chief Justice of the Court of Common Pleas and the reference shall be subject and according to the provisions of the Common Law Procedure Act, 1854, and the costs of the arbitration shall be in the discretion of the arbitrator whose decision shall with respect to all such matters be final and conclusive and subject to this provision the directions and determination of the auditor shall be final and conclusive.

Arbitration between auditor and company.

For Metropolitan Board read now London County Council. See footnote, p. 310.

See Arbitration Act, 1889 (52 & 53 Vict. c. 49), ss. 5 and 24.

61. The remuneration of the gas referees and of the chief gas examiner and of the auditor shall be such as the Board of Trade from time to time direct and a proportionate part of the same and of all expenses properly incurred by them in or about the execution of their duties to be fixed from time to time by the Board of Trade having regard to the paid-up capital of the Commercial Company shall be paid by them on demand to such fund or account and in such manner as the Board of Trade from time to time direct and shall be a debt due from the Commercial Company to the Crown and shall be recoverable accordingly with costs.

Remuneration and expenses of gas referees, etc.

62. The profits of the Commercial Company to be divided among the shareholders in any year shall not except as in this Act is otherwise provided exceed the rate of ten pounds per centum per annum upon the capital paid up on the passing of this Act and the rate of seven pounds per centum per annum on shares or stock of the additional capital by this Act authorised to be raised (which rates are respectively in this Act referred to as the standard rates of dividend).

Profits of company limited.

See the provisions of s. 5 of the Commercial Gas Act, 1902, *post*, p. 341.

63. If the clear profits of the undertaking of the Commercial Company in any year amount to a larger sum than is sufficient to make up the rates of dividend by this Act authorised the excess beyond the sum necessary for such purpose shall from time to time to the extent of one pound per centum per annum upon the paid-up capital of the company be invested in government or other securities and the dividends and interest arising from such securities shall also be invested in the same or like securities in order that the same may accumulate at compound interest until the fund so formed amounts to a sum equal to one twentieth of the paid-up capital of the

If profits exceed the amount limited excess to be invested and form an insurance fund.

Sect. 63.

company which sum shall form an insurance fund to meet any extraordinary claim or demand which may at any time arise against the company from accident which in the opinion of the auditor due prudence and management could not have prevented and if such fund be at any time reduced it may thereafter be again made up to the said sum and so from time to time as often as such reduction shall happen provided that when and so often as the said fund shall reach one twentieth part of the paid-up capital the interest thereon shall be carried to the credit of the fund available for dividend. Provided also that resort may from time to time be had to the insurance fund to meet any extraordinary claim or demand as aforesaid although such fund may not at the time have reached or may have been reduced below the full amount of one twentieth as aforesaid.

Application of excess of profits over prescribed rate of dividend.

64. If the clear profits of the undertaking of the Commercial Company in any year amount to a larger sum than is sufficient to make up the rates of dividend by this Act respectively authorised and to form or make up the insurance fund by this Act authorised the excess shall (subject to the provisions of this Act respecting the reserve fund) be carried to the credit of the divisible profits of such undertaking for the next following year.

Power to create a reserve fund out of dividends in excess of the prescribed rate of dividends.

65. Where in any year the amount of the prescribed rates of dividend of the Commercial Company shall by reason of a diminution of the standard price charged by the company in such year be increased then out of the amount of the divisible profits of the company applicable to the payment of such increase the company may in such year set apart such sum as they shall think fit.

Application of reserve fund.

66. All sums (if any) so set apart by the Commercial Company and the reserve fund existing at the time of the commencement of this Act may be invested in Government or other securities and the dividends and interest arising from such securities may also be invested in the same or like securities in order that the same may accumulate at compound interest and the fund so formed shall be called the "reserve fund" and shall be applicable to the payment of dividend in any year in which the clear profits of the company shall be insufficient to enable the company in such year to pay the rates of dividend respectively authorised by this Act and save as in this Act otherwise provided no sum shall in any year be carried by the company to any reserve fund.

As to conversion of borrowed money into capital.

67. The Commercial Company shall not raise any moneys by this Act or by any other Act of the company authorised to be borrowed on mortgage or any part of such moneys by the creation of shares or stock instead of borrowing or convert into capital the amount borrowed under the provisions of this Act or of any other Act of the company unless in either case all dividends upon such shares or stock whether ordinary or preferential are limited to a rate not exceeding five pounds per centum per annum.

Note.

A similar section occurs in the Gaslight and Coke Company's Act, 1876 (39 & 40 Vict. c. ccxxv.), s. 24, and in the South Metropolitan Act, 1876 (39 & 40 Vict. c. ccxxix.), s. 25. See s. 56 of the Companies Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16), and notes thereto, *post*.

Governors for street lamps.

68. The Commercial Company supplying gas to public lamps or the local authority may at their own expense cause to be affixed to each lamp the instrument known as a street lamp governor and the Commercial Company or the local authority as the case requires shall be entitled to have access thereto for the purpose of examining the same and in case any dispute arises between the company and the local authority with reference to the affixing operation or inspection of governors the same shall be referred to the determination of the chief gas examiner whose decision shall be final and conclusive.

Limit of charge for gas supplied to public lamps.

69. The Commercial Company shall not charge a higher price per one thousand cubic feet for gas supplied to a local authority than the lowest price per one thousand cubic feet charged by them at the same time to any private customer but if the Commercial Company contend as against the local authority that there are special circumstances justifying them in charging a lower price to any other customer the question whether or not such lower price shall be taken as the standard for the price to be charged to the local authority shall be determined by arbitration and the price fixed by such arbitration shall continue for two years at least.

Arbitration under this section shall be conducted in the manner prescribed by the Lands Clauses Consolidation Act, 1845, with respect to the settlement of disputes by arbitration.

Company to make a map.

70. The Commercial Company shall within six months after the commencement of this Act provide a map of the district within which their mains or pipes may be laid to a scale of not less than five feet to a mile and shall show thereupon the lines and sizes and depth beneath the surface of all their existing mains or pipes except service pipes to separate houses and the positions of all valves syphons and other appliances and shall once in every year on or before the thirty-first day of December correct such map and make such alterations in or additions thereto as may be necessary to show correctly as near as may be the lines position sizes and depths of the various pipes and also their appliances and shall keep such map in the principal office of the company and the same shall be open to the inspection of the local authorities and their officers and to the public generally during usual office hours who may inspect or take copies of or extracts from the same and the company may charge and take the sum of one shilling for each inspection of such map and the further sum of two shillings and sixpence for each extract tracing or copy taken of such map and if the company wilfully fail to comply with any of the requirements of this Act in respect of such map they shall for every such offence forfeit and pay any sum which two justices of the peace may adjudge not exceeding the sum of fifty pounds.

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Pressure of gas.

71. All gas supplied by the Commercial Company to a private consumer shall (except in case of accident or repairs) be supplied at such pressure as to balance from midnight to sunset a column of water not less than six-tenths of an inch in height and to balance from sunset to midnight a column of water not less than one inch in height at the main as near as may be to the junction therewith of the service pipe supplying the customer's house building or lands.

Power to refuse supply to person in debt for other property.

72. If a person requiring a supply of gas from the Commercial Company has previously quitted premises at which gas was supplied to him by them without paying to them all gas and meter rent due from him in respect thereof they may refuse to furnish to him a supply of gas until he pays the same.

Deposit in case of dispute.

73. Where a dispute arises between the Commercial Company and one of their customers respecting any payment to be made to them if the customer deposits with them by way of security the amount claimed by them it shall not be lawful for them to discontinue a supply of gas to the customer by reason of the dispute but nothing herein shall authorise them where such deposit is not made to discontinue a supply of gas to him in any case in which they would not have been authorised to do so if this Act had not been passed.

Contract to be signed before gas consumed.

74. Every person being or desiring to become a customer of the Commercial Company shall if required by them sign a contract with them in the form given in the schedule to this Act or to the like effect with such variations and additions as circumstances require and if any person refuses to do so the company may refuse to give or may discontinue the supply of gas to him and may remove any meter belonging to them in his possession.

Fixing minimum rent for gas.

75. Notwithstanding anything contained in the Metropolis Gas Act, 1860, the Commercial Company shall not be compelled to lay on gas for any stable or other outbuilding where the company do not supply gas to the house to which such stable or outbuilding belongs unless the person requiring such gas shall agree that the consumption of gas in such stable or outbuilding be at the rate of at least ten shillings per annum or unless such person shall pay the expense of service pipe and meter.

Gas rents payable by occupiers who are servants may be recovered from their employers.

76. Where in any proceeding for the recovery of any gas rent due to the Commercial Company from the occupier of any premises it is proved to the satisfaction of the justices or court having cognizance of the case that such occupier occupied the said premises as the agent or servant of some other person such last mentioned person shall be liable to pay such gas rent to the company in the same manner and to the same extent as such occupier.

Incoming tenants to give security if required.

77. Sections fifteen and sixteen of the Metropolis Gas Act, 1860, which require security to be given shall apply to the supply of gas or of meters to any person who shall succeed a tenant in the occupation of a house or premises where at the time of such persons entering into possession gas was consumed and who shall desire to continue to use the gas of the Commercial Company as though the company had not theretofore supplied the said house and premises and the company in default of such person's compliance may discontinue the supply of gas to such person and remove the meter.

See the sections referred to *ante*, p. 280.

Notice to company of connecting or disconnecting meters.

78. Before any person connects or disconnects or allows any other person to connect or disconnect any meter by which any of the Commercial Company's gas is intended to be or has been registered he shall give not less than twenty-four hours notice in writing to the company of his intention so to do and if any person fail to give such notice he shall for every such offence forfeit not exceeding five pounds.

Repair of meters.

79. Every consumer of gas of the Commercial Company shall at all times and at his own expense keep every meter belonging to him whereby any gas of the company is registered in proper order and proper and sufficient in all respects for correctly registering the gas supplied to him and in default thereof the company may cease to supply gas through such meter and the company shall at all reasonable times have access to and be at liberty to take off remove test inspect replace and if necessary repair any meter belonging to a consumer and if the meter be found in proper order and proper and sufficient in all respects the taking off removing testing inspecting and replacing shall be done at the expense of the company but otherwise at the expense of the consumer together with the cost of repair and if any consumer refuses or prevents the access to and the removal of such meter for the purpose aforesaid it shall be lawful for the company to cut off the supply of gas without further notice.

Power to remove meters and fittings.

80. The Commercial Company after twenty-four hours notice in writing under the hand of the secretary or some other officer of the company to the occupier or if unoccupied then to the owner or lessee of any land house or building in which any pipe meter or fitting belonging to the company is laid or fixed and through or in which the supply of gas is from any cause other than the fault of the company discontinued may enter the premises within the hours of nine in the morning and four in the afternoon for the purpose of removing and may remove the pipes meters or fittings repairing all damages caused by the entry or removal and every such notice shall be served by being delivered to the person for whom it is intended or left at his usual or last known place of abode or if the person or his address be not known to the company after due inquiry then by being affixed on some conspicuous part of the said premises.

81. [Power to company to let meters.]

82. [Fraudulently injuring meters.]

83. [For preventing frauds and waste of gas.]

Sect. 84.

Mode of measuring gas for public lamps.

84. The gas for public lighting shall if required by either party be supplied by measurement and the referees shall if required by either party from time to time prescribe and certify the mode of ascertaining the quantity of gas consumed by the public lamps.

85. [Recovery of charges for gas.]

86. [Recovery of sums due to the company.]

87. [Register of meter to be primâ facie evidence of gas consumed.]

88. [Penalties on company not cumulative.]

89. [Amalgamation of Ratcliff with Commercial Company.]

90. [Meaning of terms relating to amalgamation.]

91. [Undertaking of dissolved company vested in amalgamated company.]

92. [Limits of amalgamated company.]

93. [Acts relating to dissolved company to apply to amalgamated company.]

94. [Saving debts and claims of dissolved company.]

95. [Saving conveyances contracts, etc.]

96. [Causes and rights of action reserved.]

97. [Actions not to abate.]

98. [Saving submissions and awards relating to dissolved company.]

99. [Unexecuted works of dissolved company may be completed.]

100. [Officers of dissolved company to be accountable for books, etc.]

101. [Officers, etc., of dissolved company.]

102. [Books, etc., to be evidence.]

103. [Resolutions of dissolved company to remain in force.]

104. [Payment of calls.]

105. [Registers books and certificates relating to dissolved company to subsist until replaced.]

106. [Byelaws to remain in force.]

107. [General saving of rights and claims.]

108. [Extension of provisions to amalgamated company.]

109. [Share capital of amalgamated company.]

110. [Saving for Commercial preferences.]

111. [Conversion of Ratcliff share capital into stock.]

112. [Company to issue certificates and may require old certificates to be exchanged.]

113. [Continuance of trusts of shares, etc.]

114. [Reserved fund of dissolved and amalgamated companies.]

115. [Mortgages and bonds to be a charge on united undertaking.] Sect. 115.

116. [Borrowing powers of amalgamated company.]

117. [Debts and credits on revenue account.]

118 [Expenses of amalgamation.]

119. [Directors of amalgamated company.]

120. [Auditors of amalgamated company.]

121. [Qualification of directors and auditors.]

122. [Remuneration of directors.]

123. [Differences between two companies.]

124. [Expenses of Act.]

The SCHEDULE to the foregoing Act.

THE COMMERCIAL GAS COMPANY.

I do hereby contract with the Commercial Gas Company for a supply of gas by meter on the following terms and conditions (namely) at per thousand cubic feet or such other rate as the company are for the time being entitled under Act of Parliament to charge and per quarter for the use of the company's light meter and if the meter from any cause ceases or omits to register accurately the quantity of gas used I hereby agree to pay in respect of the gas consumed a reasonable proportion of the above rate for and during the period of such non-registration. And I agree to pay the rent [quarterly] and hold myself liable for all gas consumed on the above premises whether by myself or others until notice in writing be given by me to the company.

I also agree that the meter shall be accessible at all reasonable times to the inspection of the company's inspectors or servants.

(Signed)
Consumer.
(Witness)
Inspector.

GASLIGHT AND COKE COMPANY ACT, 1876.

(39 & 40 VICT. C. CCXXV.).

An Act for granting further powers to the Gaslight and Coke Company; and for other purposes. [11th August 1876.]

WHEREAS by the Metropolis Gas Act, 1860, provision was made for regulating the supply of gas to the metropolis :

And whereas by the City of London Gas Act, 1868, the provisions of the Metropolis Gas Act, 1860, were amended, so far as it affected the Gaslight and Coke Company, the City of London Gaslight and Coke Company, and the Great Central Gas Consumers Company, 31 & 32 Vict. c. cxxv.

and such companies, together with the Victoria Docks Gas Company, the Equitable Gaslight Company, the Western Gaslight Company, Limited, the Imperial Gaslight and Coke Company, and the Independent Gaslight and Coke Company, have since been amalgamated under the name of the Gaslight and Coke Company:

And whereas it is expedient that the provisions of the recited Acts and other Acts relating to the Gaslight and Coke Company, be amended, and that further powers be conferred on that company with respect to the taking and using of lands, the raising of capital, and other matters, but the same cannot be effected without the authority of Parliament:

And whereas plans delineating lands intended to be authorised to be taken under this Act, and a book of reference thereto containing the names of the owners or reputed owners, and lessees or reputed lessees, and of the occupiers of those lands, and describing those lands, have been deposited with the respective clerks of the peace for the counties of Middlesex, Kent, and Essex (which are in this Act referred to as the deposited plans and books of reference):

May it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows; (that is to say,)

Short title.

1. This Act may be cited as "The Gaslight and Coke Company Act, 1876."

Provisions of certain general Acts incorporated.

2. The Lands Clauses Consolidation Acts, 1845, 1860, and 1869 (except so far as the provisions thereof are amended by or inconsistent with this Act), are incorporated with and form part of this Act.

3. [Interpretation of terms.]

4. [Commencement of Act.]

5. [Power for company to take lands and erect gasworks.]

6. [Powers for compulsory purchases limited.]

7. [Application of capital.]

Repeal of certain enactments.

8. The enactments specified in the first column of Part I. of the Schedule B. to this Act annexed, shall, to the extent specified in the second column of the same schedule, be and the same are hereby repealed, and the enactments of the Metropolis Gas Act, 1860, specified in Part II. of the same schedule, shall from and after the passing of this Act cease to relate or apply to or affect the Independent Gaslight and Coke Company.

See Schedule B. at p. 329.

9. [Capital of the company defined.]

10. [Profits of company defined.]

NOTE.

By the Gaslight and Coke Company's (Capital Consolidation) Act, 1898, (61 & 62 Vict. c. clxxii.), the company obtained power to convert their share capital and debenture capital, the ordinary stock being converted into a 4 per cent. stock. See now hereon s. 34 of the Gaslight and Coke Company's Act, 1909, *post*, p. 353.

11. [Power to raise additional capital.]

12. [New shares or stock subject to same incidents as other shares or stock.]

13. [New shares to be offered by auction or tender.]

14. [As to notice to be given as to sale, etc., of shares.]

15. [Shares not sold by auction or by tender to be offered to shareholders.]

16. [Application of premium arising on issue of shares or stock.]

17. [Power to borrow on mortgage.]

18. [Restrictions on raising additional capital beyond one million.]

PRICE OF GAS.

19. [*Fixing maximum price of common gas, with sliding scale as to dividend.*]

This section was amended by ss. 15 and 16 of the Gaslight and Coke Company's (Capital Consolidation) Act, 1898 (61 & 62 Vict. c. clxxii.), and the last-mentioned sections were amended by s. 8 of the Gaslight and Coke Company's Act, 1903, (3 Edw. 7, c. xli.), but all of these amending sections, and s. 19, *supra*, were repealed by s. 34 of the Gaslight and Coke Company's Act, 1909 (9 Edw. 7, c. lxxxvii.). See the substituted provisions in that section, *post*, p. 353.

Maximum price of cannel gas.

20. The maximum price to be from time to time charged by the company for cannel gas supplied by them shall, so long as the company charge the standard price for common gas, be four shillings and ninepence per one thousand cubic feet, and in case they shall increase or decrease such standard price, the maximum price for cannel gas shall be at such rate per one thousand cubic feet as for cannel gas of the illuminating power supplied by the company will be proportional to the price per one thousand cubic feet charged by the company for the time being for common gas.

If profits exceed the amount limited, excess to be invested and form an insurance fund.

21. If the clear profits of the undertaking of the company in any year amount to a larger sum than is sufficient to pay the standard rate of dividend, the excess beyond the sum necessary for that purpose may from time to time, to the extent of one per centum per annum upon the paid-up capital of the company, be invested in government or other securities, and the dividends and interest arising from such securities shall also be invested in the same or like securities, in order that the same may accumulate at compound interest until the fund so formed amounts to a sum equal to one-twentieth of the paid-up capital of the company, which sum shall form an insurance fund to meet any extraordinary claim, demand, or charge which may at any time arise against or fall upon the company from accident, strikes, or other circumstances, which in the

Sect. 21.

opinion of the auditor due care and management could not have prevented; and if such fund be at any time reduced it may thereafter be again made up to the said sum, and so from time to time as often as such reduction shall happen; provided that when and so often as the said fund shall reach one-twentieth part of the paid-up capital, the interest thereon shall be carried to the credit of the fund available for dividend: Provided also, that resort may from time to time be had to the insurance fund to meet any extraordinary claim or demand as aforesaid, although such fund may not at any time have reached or may have been reduced below the full amount of one-twentieth as aforesaid.

By s. 35 of the Gaslight and Coke Company's Act, 1909, *post*, p. 355, this and the next two sections are to be read and have effect as if the words "half year" were substituted therein for the word "year" wherever that word occurs in those sections.

It is also, in s. 35 of the Act of 1909, provided that s. 21, *supra*, and s. 22, *infra*, shall respectively be read and have effect, as if the expression "authorised rate of dividend" were substituted therein for the expression "standard rate of dividend."

Application of excess of profits over standard rate of dividend.

22. If the clear profits of the undertaking of the company in any year amount to a larger sum than is sufficient to pay the standard rate of dividend on the ordinary share capital or stock of the company, the excess, or such portion of it as is not carried to the insurance fund, shall be carried to the credit of the divisible profits of such undertaking for the next following year.

See note to s. 21.

Power to create a reserve fund out of dividends in excess of the standard rate of dividend, and application thereof.

23. Where in any year the amount of the standard rate of dividend of the company on the ordinary share capital or stock of the company shall by reason of a diminution of the standard price charged by the company in such year be increased, then out of the amount of the divisible profits of the company applicable to the payment of such increase, the company may in such year set apart such sum as they shall think fit, and all sums (if any) so set apart by the company, and the reserve fund existing at the time of commencement of this Act, may be invested in government or other securities, and the dividend and interest arising from such securities may also be invested in the same or the like securities in order that the same may accumulate at compound interest, and the fund so formed shall be called the "reserve fund," and shall be applicable to the payment of dividend in any year in which the clear profits of the company shall be insufficient to enable the company in such year to pay the standard rate of dividend on the ordinary share capital or stock of the company; and save as in this Act otherwise provided, no sum shall in any year be carried by the company to any reserve fund.

See the note under s. 21.

By s. 35 of the Gaslight and Coke Company's Act, 1909, (9 Edw. 7, c. lxxxvii.), it was provided that s. 23, *supra*, should be read and have effect as if the expression "authorised rate of dividend" were substituted for "standard rate of dividend" where that expression secondly occurs in the section.

NOTE.

By s. 11 of the Gaslight and Coke Company's Act, 1903, the use of the reserve fund under s. 23, *supra*, in distribution of dividend on ordinary stock in excess of 4 per cent. per annum is now prohibited.

See also the provisions of s. 9 of the Company's Act of 1903, *post*, p. 348, and s. 36 of their Act of 1909, *post*, p. 356.

As to conversion of borrowed money into capital.

24. The company shall not raise any moneys by this Act or by any other Act of the company authorised to be borrowed on mortgage, or any part of such moneys by the creation of shares or stock instead of borrowing, or convert into capital the amount borrowed under the provisions of this Act or of any other Act of the company, unless in either case all dividends upon such shares or stock, whether ordinary or preferential, are limited to a rate not exceeding five pounds per centum per annum.

A similar section occurs in the Commercial Gas Act, 1875 (38 & 39 Vict. c. cc.), s. 67, and in the South Metropolitan Act, 1876 (39 & 40 Vict. c. ccxxix.), s. 25. See s. 56 of the Companies Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16), and notes thereto, *post*.

ILLUMINATING POWER.

25. [*Illuminating power.*]

This section was repealed by s. 19, and schedule of the London Gas Act, 1905. See now the substituted provisions contained in s. 4 of that Act, *ante*, p. 296.

Pressure of gas.

26. All gas supplied by the company shall (except in case of accident or repairs) be supplied at such pressure as to balance from midnight to sunset a column of water not less than six-tenths of an inch in height, and to balance from sunset to midnight a column of water not less than one inch in height.

TESTING FOR ILLUMINATING POWER, PURITY, AND PRESSURE.

Mode and times of testing illuminating power and pressure.

27. The gas referees shall, subject to the provisions of this Act, from time to time prescribe and certify the mode to be adopted for testing and recording the illuminating power and pressure of gas supplied by the company, and the number of the times of testing.

So much of this section as relates to the pressure of the gas is repealed by the Gaslight and Coke and other Gas Companies Acts Amendment Act, 1880 (43 & 44 Vict. c. clxxxi.), s. 21, and schedule. See p. 338. For the provisions of that Act regarding pressure, see s. 6, *post*, p. 335.

See *London C. C.* v. *South Metropolitan Gas Co.*, [1904] 1 Ch. 76, referred to at p. 335, *post*. See the provisions as to testing, contained in the London Gas Act, 1905, *ante*, p. 297.

Examination of gasworks by referees.

28. The gas referees shall with all practicable speed after their appointment, and the gas referees for the time being may from time to time thereafter, inspect the works of the company and investigate the processes of manufacture carried on therein with the view of ascertaining the means adopted therein for purifying gas, and for preventing nuisance, and may from time to time apply all such tests as they think expedient at the works of the company or elsewhere for ascertaining the amount of sulphur and ammonia, and of compounds

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thereof or other impurity with which gas supplied by them is charged.

See the provisions as to testing contained in the London Gas Act, 1905, *ante*, p. 297.

Access to works.

29. The company shall give to the gas referees, and each of them, and each of their clerks, servants, and workmen, access to their works; and shall, when required, afford to them, and each of them, all facilities for the proper execution of their and his duty.

Purity of gas to be prescribed.

30. The gas referees shall from time to time ascertain with what degree of purity the company can reasonably be required to make and supply gas continuously, without occasioning a nuisance to the neighbourhood in which the works are situate, and shall thereupon prescribe and certify the maximum amount of impurity in each form with which gas supplied by the company shall be allowed to be charged, and the time from which the allowance thereof shall be enforced as against the company, regard being had to the necessity for any alteration of works by the company consequent on any such certificate.

See the London Gas Act, 1905, *ante*, p. 295.

Mode and times of testing purity of gas.

31. The gas referees shall from time to time prescribe and certify the mode to be adopted for testing and recording the purity of gas supplied by the company, and the number of the times of testing such purity.

Mode of measuring gas for public lamps.

32. The gas supplied by the company for public lighting shall, if required by either the local authority consuming or the gas company supplying such gas, be supplied by measurement; and the referees shall, if required by either party, from time to time prescribe and certify the mode of ascertaining the quantity of gas consumed by the public lamps.

33. [*Freedom of gas from sulphuretted hydrogen.*]

This section was repealed by s. 19 and schedule of the London Gas Act, 1905. See the substituted provisions contained in ss. 5—7, of that Act, *ante*, p. 297.

Provision of testing places and apparatus.

34. The gas referees shall from time to time prescribe and certify the situation, and number of the testing places, and the apparatus and materials therein, for testing the illuminating power, purity, and pressure of the gas to be provided by the company, one such place at least being prescribed in the city of London, and one or more outside the limits of the said city, and the company shall provide and maintain such testing places, apparatus, and materials accordingly.

So much of this section as relates to the pressure of the gas is repealed by the Gaslight and Coke and other Gas Companies Acts Amendment Act, 1880 (43 & 44 Vict. c. clxxxi.), s. 21, and schedule. See p. 338. For the provisions of that Act regarding pressure, see s. 6, *post*, p. 335.

See the provisions of s. 8 of the London Gas Act, 1905, *ante*, p. 297, as to pipes connecting mains with testing places.

Control, etc., of testing places.

35. The prescribed testing places, materials, and apparatus provided by the company shall be under the control and management of the corporation or the Metropolitan Board, according as the same are situate within the city or elsewhere.

Separate testing place for company.

36. The company providing a prescribed testing place may also have a separate testing place in the same building under their own control and management.

37. [*Description of burner for testing illuminating power.*]

This section was repealed by s. 19, and schedule of the London Gas Act, 1905. See the substituted provisions contained in s. 3 of that Act, *ante*, p. 296.

Appointment of gas examiners.

38. The corporation within the city, and the Metropolitan Board elsewhere, shall as soon as may be after the passing of this Act respectively appoint, and shall always keep appointed, a competent and impartial person or persons to be a gas examiner or gas examiners for the several testing places within their respective jurisdictions.

See note to preceding section.

Appointment of chief gas examiner.

39. There shall be a chief gas examiner, being a competent and impartial person, from time to time appointed by and removable by the Board of Trade.

See *R.* v. *London C. C.*, cited *ante*, p. 313.

40. [*Daily testing.*]

41. [*What shall be deemed illuminating power for each day.*]

42. [*Pressure.*]

43. [*Average of testings of purity.*]

44. [*Representation of company.*]

45. [*Daily reports and access to books.*]

46. [*Appeal to chief gas examiner.*]

47. [*Where no appeal, report of examiner final.*]

48. [*Quarterly report of chief gas examiner.*]

49. [*Register of gas made.*]

50. [*Forfeiture for defect of power.*]

51. [*Forfeiture for excess of impurity.*]

52. [*Forfeiture for insufficiency of pressure.*]

53. [*Saving for unavoidable accident, etc.*]

54. [*Evidence of liability to forfeiture.*]

55. [*Forfeiture and losses from fraud, etc.*]

56. [*Recovery, application, and appropriation of forfeiture.*]

These sections (40—56) have been repealed by the Gaslight and Coke and other Gas Companies Acts Amendment Act, 1880 (43 & 44 Vict. c. clxxxi.), s. 21, and schedule. Other provisions for the like purposes take their places. See *post*, pp. 338 *et seq.* And see now the provisions of the London Gas Act, 1905, *ante*, p. 297.

ACCOUNTS.

57. [Auditor of Accounts.]

58. [Ascertainment of capital of company.]

59. [Form of accounts.]*

60. [Periodical audit.]

61. [Facilities for auditor, etc.]

62. [Arbitration between parties.]

These sections (57—62) are similar to those in the Commercial Gas Act, 1875 (38 & 39 Vict. c. cc.).

MISCELLANEOUS.

63. [Ordinary meetings.]

64. [Power to manufacture products, etc.]

65. [Penalties not to be cumulative.]

Restriction on works affecting post office telegraph system.

66. The company shall not by any work or thing interfere with any telegraph post, wire, apparatus, or work of her Majesty's Postmaster-General, or execute or do any work or thing causing or likely to cause any interruption of or impediment to postal telegraphic communication, unless and until the company have given to the Postmaster-General fourteen days previous notice in writing of their intention to execute or do any work or thing affecting the property of the Postmaster-General, specifying all necessary and proper particulars relating thereto, nor unless and until the Postmaster-General has approved of such proposed work or thing in writing delivered to the company, or has for fourteen days after service of the notice and particulars on him failed to so approve or to disapprove; provided always, that this section shall not be deemed to prevent the company executing any repairs or other works or things which shall be necessary to prevent accidents from the escape of gas or otherwise, and in any such case the company shall forthwith give notice to the Postmaster-General of any such interference, and the reason for the same.

Power for Postmaster-General to annex conditions.

67. Her Majesty's Postmaster-General may annex to his approval under this Act of any work or thing reasonable terms and conditions, and the company shall observe and perform the same; and if any dispute shall arise under this section the same shall be settled by a single arbitrator to be appointed under the provisions of the Railway Companies Arbitration Act, 1859, and in every such case her Majesty's Postmaster-General and the company shall be deemed to be railway companies within the meaning and for the purposes of the last-mentioned Act.

Compensation by company to Postmaster-General and penalty.

68. The company shall from time to time make full compensation to her Majesty's Postmaster-General for any expense, loss, or damage which he is put to or sustains by reason of this company, by any work or thing

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* See *Leamington Priors Gas Co.* v. *Davis*, cited *ante*, p. 240, and *Marsden* v. *Gaslight and Coke Co.*, Jl. of G. L., December 3rd, 1889, vol. 54, p. 1067.

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executed or done by them, interfering with any telegraph post, wire, apparatus, or work of the Postmaster-General; and if at any time any such work or thing causes an interruption of or impediment to postal telegraphic communication, the company shall, in addition to making compensation as aforesaid, be liable to forfeit a sum not exceeding twenty pounds for every twenty-four hours during which that interruption or impediment continues, and the amount of any such expense, loss, damage or forfeiture shall be a debt due from the company to the Crown, and be recoverable accordingly with costs, or the same may be recovered with costs on behalf of the Postmaster-General as a penalty is recoverable from the company.

69. [Works not to be commenced without consent of conservators.]

70. [Company not to interfere with bed of Thames except according to plan.]

71. [Not to take materials from river without consent of conservators.]

72. [Lights to be kept burning.]

73. [Board of Trade or conservators may remove abandoned works at expense of company.]

74. [Saving rights of conservators.]

75. [For protection of works of Havering, Dagenham, etc., Commissioners of Sewers.]

76. [Application of part of section 46 of Gaslight and Coke Company's Act, 1868, to lands to be acquired by the company.]

77. [Expenses of Act.]

SCHEDULES REFERRED TO IN THE FOREGOING ACT.

SCHEDULE A.

[*Lands to be used by the Company for Gasworks, etc.*]

SCHEDULE B.

PART I.

Title of Act.	Extent of Repeal.
The City of London Gas Act, 1868.	Sections 25 to 28, both inclusive. Sections 33 to 84, both inclusive. Sections 91 and 92.
The Gaslight and Coke Company's Act, 1868.	So much of section 109 as extends to the above specified sections of the City of London Gas Act, 1868, by this Act repealed, to places beyond the limits of the City of London and liberties thereof.
The Imperial Gas Act, 1869 ...	Sections 21 to 23, both inclusive. Sections 25 to 73, both inclusive.

SCHEDULE B.

PART II.

The Metropolis Gas Act, 1860 ...	Section 2, as far as it incorporates the provisions of "The Gasworks Clauses Act, 1847," with respect to the amount of profit to be received by the undertakers from the gasworks carried on for their benefit, or imposes any restriction on a gas company in respect of the rate of dividend. So much of section 4 as defines the meaning of the words "common gas" and "cannel gas." Sections 7 to 12, both inclusive. Sections 25 to 34, both inclusive. Sections 37 and 38. Sections 40 to 44, both inclusive.

SOUTH METROPOLITAN GASLIGHT AND COKE COMPANY'S ACT, 1876.

(39 & 40 VICT. C. CCXXIX.)

An Act to grant further powers to the South Metropolitan Gaslight and Coke Company. [11th August, 1876.]

This Act being on the same lines as the Acts of the Commercial Company and the Gaslight and Coke Company, it is unnecessary to reproduce the Act here at any length. A very few sections only will therefore be inserted.

Profits of company defined.

6. Except as in this Act provided the profits of the company to be divided among the shareholders in any year shall not exceed the rate of ten pounds per centum per annum (which rate is in this Act referred to as "the standard rate of dividend") on the ordinary share capital or stock of the company authorised by Parliament and paid up and expended on or in connection with the undertaking of the company.

See note to s. 21.

Repeal of certain parts of Act of 1869.

10. Sections 13 and 14, and sections 19 to 66 both inclusive, in the Act of 1869, are hereby repealed.

11 to **20.** These sections relate to additional capital, auction and tender, application of premium and borrowing powers.

Sections 13—16 are repealed by s. 5 of the South Metropolitan Gas Act, 1896 (59 & 60 Vict. c. ccxxvi.), which substitutes other provisions.

21. [*Fixing maximum price of gas, with sliding scale as to dividends.*]

This section fixed the standard price at 3*s.* 6*d.* with the usual sliding scale. By the South Metropolitan Gas Act, 1896 (59 & 60 Vict. c. ccxxvi.), the company obtained power to convert their ordinary stock into a 4 per cent. stock subject to the sliding scale. Section 16 of that Act was as follows:—

Standard price under sliding scale.

> 16. With respect to the decrease and increase of the dividend payable by the company according to increase or decrease in the standard price

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of gas supplied by the company the following provision shall have effect in lieu of the provision in that behalf contained in section twenty-one of the Act of 1876 (that is to say):

The company may increase or reduce the price charged by them for gas above or below such standard price subject to a reduction or increase in the standard dividend payable by the company on the ordinary stock as follows:

In respect of any half-year during any part of which the price charged by the company shall have been one penny or part of a penny above the standard price the dividend payable by the company for that half-year shall in respect of each penny or part of a penny by which the standard price shall have been increased be reduced below the standard rate of dividend by one shilling on every hundred pounds of paid-up ordinary stock and so in proportion for any fraction of one hundred pounds;

And in respect of any half-year during the whole of which the price charged by the company shall have been one penny or more below the standard price the dividend payable by the company for that half-year may in respect of each penny by which the price shall have been so reduced below such standard price be increased above the standard rate by one shilling on every hunded pounds of paid-up ordinary stock and so in proportion for any fraction of one hundred pounds;

Provided that if in any half-year the dividend payable shall be a fractional amount less than one quarter per centum the company may defer the payment of such fractional amount until the payment of the next or some succeeding dividend and shall in the discretion of the company either add such fractional amount to and pay the same with such succeeding dividend accordingly or add the same to the reserve fund.

The above section has in its turn been repealed by the South Metropolitan Gas Act of 1900 as from the 1st day of July, 1901. This Act also repealed s. 21 of the Act of 1876, and varied the standard price. See further, *post*, p. 339.

If profits exceed the amount limited, excess may be invested and form an insurance fund.

22. If the clear profits of the undertaking of the company in any year amount to a larger sum than is sufficient to pay the standard rate of dividend, the excess beyond the sum necessary for that purpose may from time to time, to the extent of one per centum per annum upon the paid-up capital of the company, be invested in Government or other securities, and the dividends and interest arising from such securities shall also be invested in the same or like securities in order that the same may accumulate at compound interest until the fund so formed amounts to a sum equal to one-twentieth of the paid-up capital of the company, which sum shall form an insurance fund to meet any extraordinary claim, demand or charge which may at any time arise against or fall upon the company from accident, strikes or other circumstances which, in the opinion of the auditor, due care and management could not have prevented, and if such fund be at any time reduced it may thereafter be again made up to the said sum, and so from time to time as often as such reduction shall happen: Provided that when and so often as the said fund shall reach one-twentieth part of the paid-up capital, the interest thereon shall be carried to the credit of the fund available for dividend: Provided also, that resort may from time to time be had to the insurance fund to meet any extraordinary claim or demand as afore-

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said, although such fund may not at the time have reached or may have been reduced below the full amount of one-twentieth as aforesaid.

Application of excess of profits over standard rate of dividend.

23. If the clear profits of the undertaking of the company in any year amount to a larger sum than is sufficient to pay the standard rate of dividend on the ordinary share capital or stock of the company, the excess, or such portion of it as is not carried to the insurance fund, shall be carried to the credit of the divisible profits of such undertaking for the next following year.

Power to create a reserve fund out of dividends in excess of the standard rate of dividend, and application thereof.

24. Where in any year the amount of the standard rate of dividend of the company on the ordinary share capital or stock of the company shall by reason of a diminution of the standard price charged by the company in such year be increased, then, out of the amount of the divisible profits of the company applicable to the payment of such increase, the company may in such year set apart such sum as they shall think fit, and all sums (if any) so set apart by the company and the reserve fund existing at the time of commencement of this Act may be invested in Government or other securities, and the dividends and interest arising from such securities may also be invested in the same or the like securities, in order that the same may accumulate at compound interest, and the fund so formed shall be called "the reserve fund," and shall be applicable to the payment of dividend in any year in which the clear profits of the company shall be insufficient to enable the company in such year to pay the standard rate of dividend on the ordinary share capital or stock of the company, and save as in this Act otherwise provided no sum shall in any year be carried by the company to any reserve fund.

As to conversion of borrowed money into capital.

25. The company shall not raise any moneys by this Act or by any other Act of the company authorised to be borrowed on mortgage, or any part of such moneys, by the creation of shares or stock instead of borrowing, or convert into capital the amount borrowed under the provisions of this Act or of any other Act of the company, unless in either case all dividends upon such shares or stock, whether ordinary or preferential, are limited to a rate not exceeding five pounds per centum per annum.

As to the above section, see note to s. 67 of the Commercial Gas Act, 1875 (38 & 39 Vict. c. cc.), *ante*, p. 316.

26. [*Illuminating power.*]

This section was repealed by s. 19 of the London Gas Act, 1905. See the substituted provisions in s. 4 of that Act, *ante*, p. 296.

Sections 27—33 (relating to pressure, mode and times of testing for illuminating power, and of testing purity of gas, testing places, and other matters) are substantially the same as ss. 26—32 in the Gaslight and Coke Company Act, 1876 (39 & 40 Vict. c. ccxxv.). Section 34 (freedom of gas from sulphuretted hydrogen) was repealed by s. 19 of the London Gas Act, 1905, and the provisions of s. 6 of that Act were substituted therefor. Section 35 corresponds to s. 34 of the Gaslight and Coke Company's Act of 1876. See that section, *ante*, p. 326, and s. 8 of the London Gas Act, 1905, referred to thereunder. Sections 36 and 37 correspond to ss. 35 and 36 of the Gaslight and Coke Company's Act, 1876, *ante*, p. 327. Section 38 was repealed by s. 19

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of the London Gas Act, 1905, s. 3 whereof contains substituted provisions. Sections 39 and 40 correspond to ss. 38 and 39 of the Gaslight and Coke Company's Act, 1876, *ante*, p. 327. So much of ss. 28 and 35 as relates to the pressure of the gas is repealed by the Act of 1880, s. 21. See pp. 338 *et seq.*

Sections 41 to 56, repealed by the Act of 1880, are similar to those repealed by that Act in the Acts of the other two companies.

See the South Metropolitan Gas Act, 1900, *post*, p. 339.

GASLIGHT AND COKE AND OTHER GAS COMPANIES ACTS AMENDMENT ACT, 1880.

(43 & 44 VICT. C. CLXXXI.)

An Act to make further Provision for regulating the Supply of Gas by the Gaslight and Coke Company, the Commercial Gas Company, and the South Metropolitan Gas Company, and to amend the Acts relating to the said Companies. [26th August, 1880.]

WHEREAS by the Gaslight and Coke Company Act, 1876, the Commercial Gas Act, 1875, and the South Metropolitan Gaslight and Coke Company's Act, 1876, further provisions were made for regulating the supply of gas within the limits within which the said companies were respectively authorised to supply gas, and the said companies were respectively made liable in certain cases to the forfeitures fixed by the said Acts respectively:

39 & 40 Vict. c. ccxxv.
38 & 39 Vict c. cc.
39 & 40 Vict. c. ccxxix.

And whereas it is expedient to amend the provisions of the said Acts respectively with respect to the testing of the gas supplied by the said companies respectively, and with respect to such forfeitures as aforesaid, and in other respects as by this Act provided:

And whereas the objects aforesaid cannot be effected without the authority of Parliament:

May it therefore please your Majesty that it may be enacted, and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows; (that is to say,)

Short title.

1. This Act may be cited for all purposes as the Gaslight and Coke and other Gas Companies Acts Amendment Act, 1880.

This Act, as amended by the London Gas Act, 1905, and the last-mentioned Act are to be read and construed together as one Act (see s. 2 of the London Gas Act, 1905, *ante*, p. 296).

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Interpretation of expressions.

2. In this Act—

The expression "the city" means the city of London and the liberties thereof:

The expression "the corporation" means the mayor, aldermen and commons of the city of London in common council assembled:

The expression "the Metropolitan Board" means the Metropolitan Board of Works*:

The expression "the special Act," in relation to any of the companies to which this Act applies, means and includes any and every Act of Parliament relating exclusively to such company, and so much of any and every other Act of Parliament as affects such company:

The expression "the district" in relation to any of the companies to which this Act applies, means the area within the limits of this Act in which such company is for the time being authorised to supply gas:

The expression "testing place" shall mean a testing place prescribed and certified by the gas referees:

The expression "the controlling authority," in relation to any place in the city, means the corporation, and in relation to any other place within the limits of this Act means the Metropolitan Board.

Limit of Act. 18 & 19 Vict. c. 120.

3. This Act shall not be in force in any place beyond the limits of the metropolis as such limits are defined by the Metropolis Management Act, 1855.

Application of Act.

4. This Act shall extend and apply to the companies following; (that is to say,)

The Gaslight and Coke Company;

The Commercial Gas Company; and

The South Metropolitan Gas Company;

and throughout the districts of the said companies, and for the purposes of its application throughout any one of such districts the expression "the company" shall be construed to mean such one of the said companies as is for the time being authorised to supply gas in such district, and the expression "the gas referees," "the chief gas examiner," and "gas examiner" shall respectively have the meanings assigned to the same expressions in the special Act of such company, and the special Act of such company, as amended by this Act, and this Act, shall be construed together as one Act.

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* The duties, etc., of this board are now transferred to the London County Council. See footnote at p. 310.

Power to gas referees to visit testing places.

5. The gas referees shall from time to time, after giving notice to the controlling authority, visit the testing places and examine the apparatus for the purposes of ascertaining that it is kept in good and proper repair and working order.

Mode and times of testing pressure of gas.

6. The gas referees shall from time to time prescribe and certify the mode to be adopted for testing and recording the pressure at which gas is supplied by the company, and a gas examiner shall, in the mode so prescribed, test the pressure at which gas is supplied at such hour and in such street or part of a street as the controlling authority may from time to time by an order in writing appoint, and within three days of the receipt of such order.

Daily testing for illuminating power and purity.

7. A gas examiner shall at each testing place make daily such number of tests as the gas referees may prescribe for ascertaining whether, during the whole of each day, the illuminating power and purity of the gas supplied at such testing place by the company are such as are respectively prescribed under the special Act: Provided that the test for illuminating power shall be taken at intervals of not less than one hour.

And in the event of the gas being ascertained to be defective in any such particular, such examiner shall forthwith give notice thereof to the company.

"Daily" includes Sundays (*London C. C.* v. *South Metropolitan Gas Co.*, [1904] 1 Ch. 76), but see now as to testings the provisions of ss. 5 and 10 of the London Gas Act, 1905, *ante*, pp. 297, 298.

What shall be deemed illuminating power for each day.

8. The average of all the testings at any testing place on each day of the illuminating power of the gas supplied by the company at such testing place shall be deemed to represent the illuminating power of such gas on that day at such testing place.

See now hereon the provisions of s. 4 (3) of the London Gas Act, 1905, *ante*, p. 297.

Average of testings of purity.

9. The average of all the testings at any testing place on any day of the purity of the gas supplied by the company at such testing place shall be deemed to represent the purity of such gas on that day at such testing place.

Provided always, that if on any one day the gas supplied by the company at such testing place is of less purity than it ought to be under the special Act, the average of all the testings made at such testing place on that day and on the preceding and on the following day shall be deemed to represent the purity of such gas on such one day at such testing place.

Company may be represented at testings.

10. The company may, if they think fit, on each occasion of the testing at any testing place of the illuminating power, purity, and pressure of the gas supplied by them, be represented by some officer, but such officer shall not interfere in the testing, and the controlling authority shall state at what times it is proposed to make such testings on any particular day upon receiving a request in writing from the company in the forenoon of the previous day.

Daily reports and access to books.

11. Each gas examiner shall on each day make and deliver a report of the result of the testings of the gas supplied by the company conducted by him on the immediately preceding day to the controlling authority, to the gas referees, to the chief gas examiner, and to the company, and the books kept by a gas examiner for recording the results of the testing of such gas by him shall be open at all reasonable times to the inspection of the company without payment.

12. [*Appeal to chief gas examiner.*]

The above section was repealed by s. 11 of the London Gas Act, 1905. See now ss. 9, 11, 12, 13, 17, and 18 of that Act, *ante*, pp. 298—300.

It was under the repealed section held that the chief gas examiner had a discretion as to whether he would or would not hear counsel upon an appeal to him, and a *mandamus* to compel him to hear counsel was refused (*R.* v. *Williamson* (1890), 59 L. J. Q. B. 493).

It was also held that the section required the chief gas examiner to hear both sides before deciding. Where the chief gas examiner took evidence without notice to the company, his determination and report were quashed by *certiorari*, though both parties had previously concurred in this mode of acting (*R.* v. *London C. C.*, *Ex parte Commercial Gas Co.* (1895), 11 T. L. R. 337).

See now hereon the provisions of s. 13 of the London Gas Act, 1905, *ante*, p. 299.

Quarterly report of chief gas examiner.

13. Within one week after the end of each quarter of a year the chief gas examiner shall make a report to the controlling authority and to the company on the results of the daily testings made in that quarter, and shall state therein with respect to gas supplied by the company in that quarter—

(1.) The illuminating power on each day at each testing place.

(2.) The amount of impurity in each form on each day at each testing place.

(3.) The results of each testing of pressure.

Forfeiture for defect of power.

14. If on any day the gas supplied by the company at any testing place is of less illuminating power than it ought to be under the special Act, the company shall be liable to the following forfeitures:

For the first half of a candle of defective power, forty shillings; and

For the first and every subsequent candle of defective power, a sum not less than twenty-five pounds, and not exceeding one hundred pounds, having regard to the relative quantities of gas manufactured by the respective companies.

Provided always, that the controlling authority of any testing place, having recovered one forfeiture in respect of defective illuminating power in the gas supplied by the company at one testing place on any day, shall not be entitled to any further forfeiture in respect of defective illuminating power in the gas supplied by the company at any other testing place of such controlling authority on the same day.

See now the provisions of s. 12 of the London Gas Act, 1905, *ante*, p. 299.

Forfeiture for excess of impurity.

15. If on any day the gas supplied by the company at any testing place is of less purity than it ought to be, the company shall forfeit a sum not exceeding fifty pounds for each occasion on which they are so in default.

Provided always, that the controlling authority of any testing place, having recovered one forfeiture in respect of excess of impurity in the gas supplied by the company at one testing place on any day, shall not be entitled to any further forfeiture in respect of excess of impurity in the gas supplied by the company at any other testing place of such controlling authority on the same day; and provided also, that the average of the testings made at such testing place on that day and on the preceding and on the following day shall be deemed to represent the purity of such gas on such one day at such testing place.

See now the provisions of ss. 6 and 7 of the London Gas Act, 1905, *ante*, p. 297.

Forfeiture for insufficiency of pressure.

16. If at any time during any period between midnight and sunset, or during any period between sunset and midnight, the gas supplied by the company is supplied at a pressure less than it ought to be under the special Act, the company shall in each case forfeit a sum not exceeding ten pounds.

Provided always, that the controlling authority, having recovered one forfeiture in respect of insufficiency of pressure in the gas supplied by the company during any period of twenty-four hours, shall not be entitled to any further forfeiture in respect of insufficiency of pressure in the gas supplied by the company during the same period.

See now the provisions of ss. 7 and 15 of the London Gas Act, 1905, *ante*, pp. 297, 299.

Saving for unavoidable accident.

17. No forfeiture shall be incurred in any case with respect to which it is certified by the chief gas examiner that the defect of illuminating power, excess of impurity, or insufficiency of pressure was occasioned by an unavoidable cause or accident.

See now the provisions of ss. 7 and 15 of the London Gas Act, 1905, *ante*, pp. 297, 299.

18. *Evidence of liability to forfeiture.*

This section was repealed by s. 14 of the London Gas Act, 1905. See now the provisions of ss. 14 and 16 of that Act, *ante*, pp. 299, 300.

Forfeiture and losses from fraud, etc.

19. Every such forfeiture, and any loss arising from fraud of the servants of the company, which the auditor (appointed as in the special Act provided) shall certify has arisen from want of due diligence on the part of the directors, shall be borne and paid to the satisfaction of such auditor exclusively by and out of the divisible profits of the company, and by way of reduction of dividend.

Recovery of forfeitures, etc.
23 & 24 Vict. c. 125.

20. Every forfeiture imposed by this Act shall be recovered, applied, and appropriated in the manner provided by sections forty-six and fifty-three of the Metropolis Gas Act, 1860, and the said sections shall be read and construed as applying to forfeitures and the recovery thereof,

Sect. 20. and otherwise in relation thereto under this Act, as if such forfeitures were penalties under the Metropolis Gas Act, 1860.

See the sections here referred to, *ante*, pp. 285, 290.

Repeal of Acts to the extent specified in schedule.

21. From and after the passing of this Act, the Acts specified in the first column of the schedule to this Act annexed shall, within the limits of this Act, be, and the same are hereby, repealed to the extent specified in the second column of that schedule. Provided that this repeal shall not affect—

(a) The past operation of any enactment hereby repealed, nor anything done or suffered under any enactment hereby repealed;

(b) Any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment hereby repealed;

(c) Any penalty, forfeiture, or punishment incurred in respect of any offence or default committed against any enactment hereby repealed; nor

(d) Any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid, and any such investigation, legal proceeding, and remedy may be carried on as if this Act had not passed.

Expenses of Act.

22. All costs, charges, and expenses preliminary to and of and incidental to the preparing of, obtaining, and passing of this Act shall be paid by the corporation out of their corporate funds, and by the Metropolitan Board as expenses incurred by them in the execution of the Metropolis Management Act, 1855, in such proportions as the Board of Trade may by writing, signed by a secretary or an assistant secretary of the said Board, order and direct.

For Metropolitan Board read now the London County Council. See footnote at p. 310.

SCHEDULE SETTING FORTH THE ENACTMENTS REPEALED BY THE FOREGOING ACT.

Acts.	Extent of Repeal.
The Gaslight and Coke Company Act, 1876.	So much of sections 27 and 34 as relates to the pressure of gas; and Sections 40 to 56, both inclusive.
The Commercial Gas Act, 1875.	In section 32, the following words "one such place being prescribed for every station from which gas is supplied in the district supplied from such station," and so much of the said section and of section 26 as relates to the pressure of the gas; and Sections 37 to 51, both inclusive.
The South Metropolitan Gaslight and Coke Company's Act, 1876.	So much of sections 28 and 35 as relates to the pressure of the gas; and Sections 41 to 56, both inclusive.

SOUTH METROPOLITAN GAS ACT, 1900.

(63 & 64 VICT. C. CLXII.)

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PART II.

ILLUMINATING POWER AND SLIDING SCALE.

Varying standard price.

5.—(1.) On and after the first day of July one thousand nine hundred and one the prescribed illuminating power of the gas supplied by the Company shall be fifteen candles and the standard price of such gas shall be three shillings and two pence. And on and after the first day of July one thousand nine hundred and five the prescribed illuminating power of the gas supplied by the Company shall be fourteen candles and the standard price of such gas shall be three shillings and one penny. Provided nevertheless that if the Company shall desire to accelerate the reduction of the illuminating power of the said gas hereby authorised from fifteen candles to fourteen candles they shall be at liberty to do so from any first day of January or first day of July giving three months previous notice in writing of their intention to the London County Council and to the town clerks of the several metropolitan borough councils in the district of supply of the Company and by advertisement in one London daily newspaper and in one newspaper circulating in the said district and in that case the reduction of such illuminating power and standard price shall take place on and from the first day of January or the first day of July named in such notice.

See s. 4 of the London Gas Act, 1905, *ante*, p. 296.

(2.) With respect to the decrease and increase of the dividend payable by the Company according to increase or decrease in the price of gas supplied by the Company the following provision shall have effect in lieu of the provision in that behalf contained in section sixteen of the Act of 1896 (that is to say):

The price charged by the Company for gas of any illuminating power in this section mentioned may be increased above or reduced below the standard price chargeable for gas of the same illuminating power subject to a reduction or increase in the standard dividend payable by the Company on the ordinary stock as follows:

In respect of any half-year during any part of which the price charged by the Company shall have been one penny or part of a penny above such standard price the dividend payable by the Company for that half-year shall in respect of each penny or part of a penny by which such standard price shall have

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been increased be reduced below the standard rate of dividend by one shilling and four pence on every hundred pounds of paid-up ordinary stock and so in proportion for any fraction of one hundred pounds;

And in respect of any half-year during the whole of which the price charged by the Company shall have been one penny or more below such standard price the dividend payable by the Company for that half-year may in respect of each penny by which the price shall have been so reduced below such standard price be increased above the standard rate by one shilling and four pence on every hundred pounds of paid-up ordinary stock and so in proportion for any fraction of one hundred pounds:

Provided that in any half-year the dividend payable shall be a fractional amount less than one quarter per centum the Company may defer the payment of such fractional amount until the payment of the next or some succeeding dividend and shall in the discretion of the Company either add such fractional amount to and pay the same with such succeeding dividend accordingly or add the same to the reserve fund.

(3.) Section twenty-one (fixing maximum price of gas with sliding scale as to dividend) of the Act of 1876 and section sixteen (standard price under sliding scale) of the Act of 1896 shall be repealed as from the first day of July one thousand nine hundred and one.

6. [*Description of burner for testing illuminating power.*]

This section was repealed by s. 19 and schedule of the London Gas Act, 1905. See the substituted provisions contained in s. 3 of that Act, *ante*, p. 296.

Company to supply suitable burners gratis in lieu of those in use.

7. The Company shall at any time within two years after the first day of July one thousand nine hundred and one if and when required by the consumers of the gas supplied by the Company other than consumers by slot meters supply to them and fix free of charge a sufficient number of burners suitable in all respects for the consumption of gas of the illuminating power prescribed by this Act. The Company shall also as soon as reasonably practicable after the said first day of July one thousand nine hundred and one and at the latest within the period of twelve months thereafter exchange the burners used by consumers of gas supplied by the Company by means of slot meters for burners similarly suitable for the consumption of gas of the illuminating power prescribed by this Act.

Notice of the provisions of this section shall be given on each demand note of the Company sent out during the said period.

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PART IV.

MISCELLANEOUS.

Form of accounts of company.

27. The accounts of the Company shall show the amount of the capital of the Company including both ordinary and debenture stock

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and the premiums thereon from time to time in cash actually raised and expended and the nominal amount of ordinary capital and debenture stock for the time being on which dividend and interest respectively are payable by the Company. The difference between the total amount of money actually raised and the total nominal amount of share and loan capital shall represent the nominal amount added by conversion in accordance with the form set forth in the schedule to this Act.

* * * * *

COMMERCIAL GAS ACT, 1902.

(2 EDW. 7, c. CXXXIV.)

An Act to convert the capital stocks and debenture stock of the Commercial Gas Company into stocks of other nominal amounts but yielding equivalent amounts of dividend or interest and to empower that Company to raise additional capital to amend the Acts relating to the Company and for other purposes. [22nd July, 1902.]

1. This Act may be cited as the Commercial Gas Act 1902. *Short title.*

2. The provisions of the Companies Clauses Consolidation Act 1845 with respect to the consolidation of the shares into stock Part III. (relating to debenture stock) of the Companies Clauses Act 1863 as amended by subsequent Acts and the Lands Clauses Acts except the provisions of the Lands Clauses Consolidation Act 1845 with respect to the purchase and taking of lands otherwise than by agreement are (except where varied by this Act) incorporated with and form part of this Act. *Incorporation of Acts.*

3. In this Act the several words and expressions to which meanings are assigned by the Acts wholly or partially incorporated herewith have the same respective meanings unless there be something in the subject or context repugnant to such construction. *Interpretation.*

4. [Recovery of demands under fifty pounds.]

5.—(1) As on and from the first day of January one thousand nine hundred and three the Company's ten per centum stock amounting to five hundred and fifty thousand pounds shall be by this Act and is hereby converted into one stock to be called "four per centum capital stock" of the nominal amount of one million three hundred and seventy-five thousand pounds and such four per centum capital stock shall belong to and be divided among the persons who are immediately before the said first day of January one thousand nine hundred and three entitled to be the holders of the ten per centum stock in the proportion of two hundred and fifty pounds of four per centum capital stock for every one hundred pounds of ten per centum stock and so in proportion for any greater or lesser amount of ten per centum stock. *Conversion of capital stocks.*

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(2) The four per centum capital stock shall as from the said first day of January one thousand nine hundred and three be entitled to a uniform dividend of four per centum per annum subject to decrease or increase as by this Act provided.

(3) As on and from the said first day of January one thousand nine hundred and three the Company's seven per centum stock issued before the passing of this Act and amounting to two hundred and fifty-one thousand eight hundred and seventy-five pounds shall be by this Act and is hereby converted into one stock to be called "three and a half per centum capital stock" of the nominal amount of five hundred and three thousand seven hundred and fifty pounds and such three and a half per centum capital stock shall belong to and be divided among the persons who are immediately before the said first day of January one thousand nine hundred and three entitled to be holders of the seven per centum stock in the proportion of two hundred pounds of three and a half per centum capital stock for every one hundred pounds of seven per centum stock and so in proportion for every greater or lesser amount of seven per centum stock.

(4) The Company's existing and unexercised power to create and issue seven per centum stock to the amount of twenty-eight thousand one hundred and twenty-five pounds shall as from the passing of this Act be deemed to be a power to create and issue and the Company may create and issue accordingly three and a half per centum capital stock to the amount of fifty-six thousand two hundred and fifty pounds which when issued shall in all respects and for all purposes whatsoever form one stock with the three and a half per centum capital stock into which the seven per centum stock is by this Act converted as aforesaid. Except to the extent of the increase in this subsection provided for nothing in this Act shall be construed as authorising any increase of nominal share capital of the company.

(5) The company shall rateably with and after the issue of any part of the said fifty-six thousand two hundred and fifty pounds three and a half per centum capital stock and before issuing any further amount of the last-mentioned stock issue such an amount of the three per centum debenture stock hereinafter referred to for the time being remaining unissued that the nominal amount of three per centum debenture stock issued after the passing of this Act shall be equal to four fifths of the nominal amount of three and a half per centum capital stock theretofore issued after the passing of this Act and the Company shall not at any time after the first issue of such last-mentioned stock after the passing of this Act issue any further amount of the same stock until they have obtained from a justice of the peace a certificate that they have after the passing of this Act issued an amount of three per centum debenture stock equal to four fifths of the nominal amount of three and a half per centum capital stock issued after the passing of this Act and on production to such justice of the books of the company and of such other (if any) evidence as may be necessary to prove compliance with the tenor of such certificate

such justice is hereby authorised and required to give such certificate under his hand.

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(6) The three and a half per centum capital stock shall as from the said first day of January one thousand nine hundred and three be entitled to a uniform dividend of three and a half per centum per annum subject to decrease or increase as by this Act provided.

(7) For the purposes of the provisions of the Companies Clauses Consolidation Act 1845 incorporated herewith the four per centum capital stock and the three and a half per centum capital stock shall respectively be deemed to have been formed by the consolidation of shares into stock.

(8) Nothing in this Act shall be deemed to authorise the Company to alter the amount of the insurance fund they are immediately before the passing of this Act authorised to form.

(9) Nothing in this Act shall take away abridge or prejudicially affect any preferential right of the holders of stock of the Company representing the preferential shares in the capital of that Company mentioned in section 55 of the Act of 1852.

Conversion of debenture stock.

6.—(1) As on and from the first day of January one thousand nine hundred and three the Company's existing debenture stock issued before the passing of this Act and amounting to two hundred and seventy-one thousand eight hundred and seventy-five pounds shall be by this Act and is hereby converted into one stock to be called "three per centum debenture stock" of the nominal amount of four hundred and seven thousand eight hundred and twelve pounds ten shillings and such three per centum debenture stock shall belong to and be divided among the persons who are immediately before the said first day of January one thousand nine hundred and three entitled to be the holders of the existing four and a half per centum debenture stock in the proportion of one hundred and fifty pounds of three per centum debenture stock for every one hundred pounds of four and a half per centum debenture stock and so in proportion for any greater or lesser amount of four and a half per centum debenture stock.

(2) The three per centum debenture stock shall as from the said first day of January one thousand nine hundred and three be entitled to and bear interest at the uniform rate of three pounds per centum per annum.

(3) The Company's existing and unexercised power to create and issue debenture stock to the amount of twenty-eight thousand one hundred and twenty-five pounds shall as from the passing of this Act be deemed to be a power to create and issue and the Company may create and issue accordingly three pounds per centum debenture stock to the amount of forty-two thousand one hundred and eighty-seven pounds ten shillings which when issued shall in all respects and for all purposes whatsoever form one debenture stock with the three per centum debenture stock into which the Company's existing debenture stock heretofore issued is by

Sect. 6. this Act converted as aforesaid Provided that the Company shall issue the said forty-two thousand one hundred and eighty-seven pounds ten shillings three per centum debenture stock rateably with but after the three and a half per centum capital stock of the nominal amount of fifty-six thousand two hundred and fifty pounds hereinbefore referred to and so that the Company shall from time to time before issuing any part or further part as the case may be of the last-mentioned debenture stock have issued an amount or a further amount as the case may be of the last-mentioned capital stock bearing to such part or further part of the said three pounds per centum debenture stock the proportion of four to three and the Company before issuing any part or further part of the said three per centum debenture stock shall obtain from a justice of the peace a certificate that the amount of the said capital stock has been issued after the passing of this Act which entitles the Company to issue a specified amount or further amount (as the case may be) of the said three per centum debenture stock and on production to such justice of the books of the Company and of such further evidence (if any) as may be necessary to prove the Company to be entitled to a certificate of the tenor aforesaid such justice is hereby authorised and required to give such certificate as aforesaid under his hand.

7. [Company to register new capital and debenture stocks in lieu of existing stocks in names of persons entitled.]

8. [Stocks appropriated by Act to be held on trusts affecting stocks for which same substituted.]

9. [Holders of new stocks to have subject to this Act same rights and liabilities as regards new stocks as they have in regard to old stocks.]

10. [Stocks to be transferable only in amounts of five pounds and multiples thereof.]

11. [How company may deal with fractional parts of five pounds of stock.]

Varying illuminating power, standard price and dividend.

12.—(1) On and after the first day of January one thousand nine hundred and three the prescribed illuminating power of the gas supplied by the Company shall be fourteen candles and the standard price of such gas shall be three shillings and threepence.

Temporary provision was made by the Commercial Gas Act, 1903, as to the burner for testing the illuminating power; but see now the London Gas Act, 1905, *ante*, p. 295, which repealed the Commercial Gas Act, 1903.

(2) With respect to the decrease and increase of the dividend payable by the Company according to increase or decrease in the price of gas supplied by the Company the following provision shall have effect in lieu of the provision in that behalf contained in section 53 of the Act of 1875 (that is to say):

The price charged by the Company for gas of the illuminating power in this section mentioned may be increased above or reduced below the standard price chargeable for such gas subject to a reduction or increase in the standard dividend payable by the Company on the capital stock as follows :—

In respect of any half year during any part of which the price charged by the Company shall have been one penny or part of a penny above such standard price the dividend payable by the Company for that half year shall in respect of each penny or part of a penny by which such standard price shall have been increased be reduced below the standard rate of dividend by one shilling and fourpence on every one hundred pounds four per centum capital stock and so in proportion for any fraction of one hundred pounds of that stock and by one shilling and eightpence on every one hundred pounds of three and a half per centum capital stock and so in proportion for any fraction of one hundred pounds of the last-mentioned stock ;

And in respect of any half year during the whole of which the price charged by the Company shall have been one penny or more below such standard price the dividend payable by the Company for that half year may in respect of each penny by which the price shall have been so reduced below such standard price be increased above the standard rate by one shilling and fourpence on every one hundred pounds of four per centum capital stock and so in proportion for any fraction of one hundred pounds of that stock and by one shilling and eightpence on every one hundred pounds of three and a half per centum capital stock and so in proportion for every fraction of one hundred pounds of the last-mentioned stock :

Provided that if in any half year the dividend payable shall be a fractional amount less than one quarter per centum the Company may defer the payment of such fractional amount until the payment of the next or some succeeding dividend and shall in the discretion of the Company either add such fractional amount to and pay the same with such succeeding dividend accordingly or add the same to the reserve fund.

(3) Section 53 (Fixing maximum price of gas with sliding scale as to dividend) of the Act of 1875 shall be repealed as from the first day of January one thousand nine hundred and three.

Company to supply suitable burners gratis in lieu of those in use.

13. The Company shall at any time within two years after the first day of July one thousand nine hundred and three if and when required by the consumers of the gas supplied by the Company other than consumers by slot meters supply to them and fix free of charge a sufficient number of burners suitable in all respects for the consumption of gas of the illuminating power prescribed by this Act. The Company shall also as soon as reasonably practicable after the said first day of July one thousand nine hundred and three and at the latest within the period of twelve months thereafter exchange the burners used by consumers of

Sect. 13. gas supplied by the Company by means of slot meters for burners similarly suitable for the consumption of gas of the illuminating power prescribed by this Act.

Notice of the provisions of this section shall be given on each demand note of the Company sent out during the said period.

14. [Power to apply and raise additional capital.]

15. [Sale of unissued stock.]

16. [Purchase money of capital sold to be paid within three months.]

17. [Notice to be given as to sale of stock.]

18. [Stock not sold by auction or by tender to be offered to holders of capital stock.]

19. [Application of premium arising on issue of stock.]

20. [Power to borrow.]

21. [Priority of money raised by debenture stock over debts.]

22. [Application of moneys.]

23. [Persons in employ of Company may nominate others to transfer stock etc. held by such persons.]

24. [Agreements for acquisition by employees of an interest in profits of Company.]

25. [Power to purchase lands by agreement. Gas not to be manufactured on lands so purchased.]

26. [Restriction on taking houses of labouring class.]

27. [Power to sell or lease lands.]

28. [As to meetings of Company closing transfer books and voting.]

29. [Increasing qualification of directors and auditors.]

30. [Expenses of Act.]

GAS LIGHT AND COKE COMPANY'S ACT, 1903.

(3 EDW. 7, c. XLI.)

An Act to enable the Gas Light and Coke Company to raise additional moneys and to purchase take and hold lands and for altering the standard price of gas and redeeming capital and for other purposes.

[30th June, 1903.]

1. This Act may be cited as the Gas Light and Coke Company's Act 1903.

2. There shall be incorporated with and form part of this Act— Sect. 2.

(A) The Lands Clauses Acts except the provisions thereof with respect to the purchase and taking of lands otherwise than by agreement :

(B) The Companies Clauses Act 1863 Part III. (except sections 32 34 and 35 thereof) :

(C) The Companies Clauses Act 1869 (except sections 5 6 7 and 8 thereof).

The said incorporated provisions of the last-named two Acts shall be applicable and apply as though this Act authorised the money which the Company is by this Act empowered to raise by the creation and issue of debenture stock to be raised on mortgage or bond.

3. Words defined in the Acts incorporated with this Act shall have the same meaning in this Act and words defined in the Gas Light and Coke Company's (Capital Consolidation) Act 1898 shall have the same meaning in this Act.

4. The Company is hereby authorised to create and issue debenture stock not exceeding the nominal amount of seven hundred and fifty thousand pounds.

5.—(A) Whenever any debenture stock is to be issued under this Act and before the same is issued the Company shall offer the same for sale by public auction or tender in such manner at such times and subject to such conditions and terms of sale as the Company shall from time to time determine.

(B) The Company shall at any such sale put such a reserved price upon the stock offered for sale as in the judgment of the Company ought to be the least price which the stock should realise at such sale and at which the Company is willing to sell the same and notice of the amount of such reserved price shall be sent by the Company in a sealed letter to the Board of Trade not less than twenty-four hours before the day of auction or the last day for the reception of tenders (as the case may be) and such letter may be opened after such day of auction or last day for the reception of tenders and not sooner.

(C) The intention to sell any such stock by auction or by tender shall be communicated in writing to the town clerk of the city of London to the clerk of the London County Council and to the Secretary of the Committee of the London Stock Exchange at least ten days before the day of auction or the last day for the reception of tenders (as the case may be) and notice of such intention shall be publicly advertised three times during the same period in two or more London daily newspapers having a good circulation of which the Times shall be one.

(D) Any sum of money which shall arise from the sale and issue of the said stock by way of premium after deduction therefrom of the expenses of and incident to such sale and issue shall not be considered as profits of the Company.

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(E) No stock shall be sold or issued otherwise than to a purchaser at such a sale by auction or by tender as aforesaid but the Company may sell any stock unsold at any one such sale by auction or tender at any subsequent sale or sales by auction or tender conducted under the conditions aforesaid and at a price either equal to or above the reserved price fixed in the manner aforesaid for such subsequent sale.

(F) Holders of the Company's capital or debenture stock shall not as such be entitled to any preference or priority as regards tendering for or purchasing any stock by this Act authorised.

6. All moneys to arise from the sale and issue of debenture stock authorised by this Act shall be applied by the Company for the purposes of its undertaking to which capital is properly applicable.

7.—(1) The debenture stock authorised by this Act to be created and issued shall be known as the second three per centum debenture stock and shall bear interest at the rate of three per centum per annum and shall rank next after the Company's three per centum consolidated debenture stock both as regards capital and as regards interest.

(2) All debenture stock created or authorised by or issued under this Act or any Act hereafter made and passed and the interest on such debenture stock shall (subject to the provisions of any Act hereafter made and passed) rank pari passu (without any regard to the dates of the securities for the same or of the Acts of Parliament or resolutions by which such stock is authorised) and have priority over all principal moneys and the interest thereon secured by mortgage bond or debenture hereafter made entered into or authorised.

8. [*Alteration of standard price and sliding scale as to dividend.*]

This section was repealed by s. 34 of the Gas Light and Coke Company's Act, 1909 (9 Edw. 7, c. lxxxvii.); see that section, *post*, p. 353.

9.—(1) Before the Company shall be entitled to or shall in respect of any calendar year after the calendar year one thousand nine hundred and three distribute—

(A) An increased dividend in excess of the standard dividend the Company shall out of the divisible profits in excess of the amount needed to provide the standard dividend for the year and before distributing any increased dividend set aside a sum up to and not exceeding ten thousand pounds and after setting aside the said sum of ten thousand pounds may distribute by way of addition to the standard dividend an increased dividend up to six shillings and eightpence per centum; or

(B) An increased dividend in excess of four pounds six shillings and eightpence per centum the Company shall out of the divisible profits aforesaid and before distributing any dividend in excess of the last-named sum per centum set aside a sum up to and not exceeding twenty thousand pounds and after setting aside the said sum of twenty thousand pounds may distribute by way of addition to the standard dividend an increased dividend up to thirteen shillings and fourpence per centum ; or

(c) An increased dividend in excees of four pounds thirteen shillings and fourpence per centum the Company shall out of the divisible profits aforesaid and before distributing any dividend in excess of the last-named sum per centum set aside a sum up to and not exceeding thirty thousand pounds and after setting aside the said sum of thirty thousand pounds may distribute by way of addition to the standard dividend an increased dividend up to one pound per centum ; or

(d) An increased dividend in excess of five pounds per centum the Company shall out of the divisible profits aforesaid and before distributing any dividend in excess of the last-named sum per centum set aside a sum up to and not exceeding forty thousand pounds :

And the several sums so from time to time set aside as aforesaid shall be and form a redemption fund :

Provided always that nothing in this section shall authorise the company at any time to distribute any dividend in excess of the authorised dividend and that for the purpose only of calculating the amount distributed in accordance with this proviso the amount set aside as redemption fund shall be assumed to have been distributed by way of dividend.

(2) "Divisible profits" in this section mean the whole amount of the Company's clear profits (inclusive of profits carried to the credit of divisible profits from any preceding year) available for distribution in dividends to the Company's capital stockholders in respect of any calendar year.

(3) The Company shall not in respect of any one calendar year distribute to the holders of ordinary stock of the Company dividends to an amount exceeding four pounds per centum upon the total nominal amount of such ordinary stock for the time being continuing to subsist without making such provision for the redemption of ordinary stock as is by this Act provided for.

(4) Subject as aforesaid the Company may apply the divisible profits in any manner in which but for this Act they can for the time being apply the same.

(5) The Company shall apply the said redemption fund during the year following that in respect of which it is set aside in purchasing in the open market ordinary stock of the Company which stock is upon the completion of every purchase thereof to be cancelled and shall thenceforth be and be taken to be extinguished.

(6) This section shall not come into operation before the year one thousand nine hundred and four nor in regard to the dividends distributed in respect of the year one thousand nine hundred and three.

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(7) In order that the price of the Company's gas may be kept down as much as the profits admit of it shall not be obligatory on the Company to set aside during the continuance of this section out of revenue any sums for the purpose of or with regard to the extinction redemption or writing off of obsolete capital.

(8) This section shall cease to operate when the company have by means of the redemption fund aforesaid purchased and extinguished ordinary stock of the Company to the nominal amount of one million pounds and a certificate under the hand of the President of the Board of Trade for the time being shall be conclusive evidence of the total amount of the Company's ordinary stock from time to time purchased and extinguished by means of the said redemption fund.

By s. 36 of the Company's Act of 1909, *post*, p. 356, it was provided that for the purposes of s. 9, *supra*, the average of the two half-yearly dividends which the Company shall in any calendar year in accordance with the provisions of the Act of 1909 be entitled to or shall distribute shall be deemed to be the dividend which they shall be entitled to or shall in respect of that calendar year distribute.

10. [Payment of certain costs by London Connty Council.]

11. The reserve fund of the Company shall not be used for the purpose of distributing in any year to the Company's ordinary stockholders a dividend upon their stock in excess of four per centum.

12. [Power to Company to hold lands.]

13. [Powers as to construction and maintenance of gasworks user of lands, etc.]

14. [Additional lands by agreement.]

15. [Restriction on taking houses of labouring class.]

16. [Costs of Act.]

GAS LIGHT AND COKE COMPANY'S ACT, 1909.

(9 EDW. 9, 7, c. LXXXVII.).

An Act to authorise the acquisition by the Gas Light and Coke Company of the undertaking of the West Ham Gas Company to confer further powers on the Gas Light and Coke Company and for other purposes.
[16th August, 1909.]

1. This Act may be cited as the Gas Light and Coke Company's Act, 1909.

Sect. 2.

2. The following parts of Acts (so far as they are applicable for the purposes of and are not inconsistent with the provisions of this Act) are hereby incorporated with this Act (that is to say) :—

The provisions of the Companies Clauses Consolidation Act 1845 with respect to the following matters (that is to say) :—

The distribution of the capital of the company into shares ;

The transfer or transmission of shares ;

The remedies of creditors of the company against the shareholders ;

The general meetings of the company and the exercise of the right of voting by the shareholders ;

The making of dividends ;

The giving of notices ; and

The provision to be made for affording access to the special Act by all parties interested :

And Part III. (relating to debenture stock) of the Companies Clauses Act 1863 as amended by subsequent Acts.

3. In this Act the several words and expressions to which meanings are assigned by the Acts partially incorporated herewith shall have the same respective meanings unless there be something in the subject or context repugnant to such construction And in this Act—

The expression "the Gas Light Company" means the Gas Light and Coke Company ;

The expression "the West Ham Company" means the West Ham Gas Company ;

The expression "the Gas Light district" means the limits of supply of the Gas Light Company as existing immediately before the date of transfer and such limits shall be deemed to include all areas within which the Gas Light Company are at the passing of this Act supplying gas ;

The expression "the West Ham district" means the several areas specified in the First Schedule to this Act ;

The expression "officer" where used in relation to the West Ham Company means any person who on the sixteenth day of December one thousand nine hundred and eight was or who since that date but before the passing of this Act has with the consent of the Gas Light Company as herein-after provided been appointed a secretary engineer accountant collector or other salaried officer of that Company but does not include any auditor of the said Company ;

"The undertaking of the West Ham Company" includes subject to the provisions of this Act all rights of making distributing and supplying gas and all other the rights powers authorities and privileges whatsoever of the West Ham Company and all property whatsoever and wheresoever and whether real or personal including cash balances reserve and insurance funds investments and all other interests and rights in to and out of the property whether real or personal and obligations and things in action of or belonging to that company immediately before the date of transfer and all books accounts deeds writings and documents relating thereto but (except as by this Act expressly provided) subject to all debts liabilities and obligations of the West Ham Company;

The expression "the controlling authority" means—

(*a*) In relation to any testing place in the city of London or the liberties thereof the mayor aldermen and commons of the said city in common council assembled;

(*b*) In relation to any testing place elsewhere within the administrative county of London the London County Council;

(*c*) In relation to any testing place within the West Ham district the several local authorities of the districts wholly or partly comprised in that district;

The expressions "the Act of 1880" and "the Act of 1905" mean respectively the Gaslight and Coke and other Gas Companies Acts Amendment Act 1880 and the London Gas Act 1905.

4. [Transfer to Gas Light Company of undertaking of West Ham Company and dissolution of that company.]

5. [West Ham Company to continue incorporated for specified purpose.]

6. [Gas Light Company to issue or allocate ordinary and preference stock in substitution for ordinary and preference stock of West Ham Company.]

7. [Gas Light Company to issue debenture stock in substitution for debenture stock of West Ham Company.]

8. [Creation and purchase of ordinary stock preference stock and debenture stock of Gas Light Company for purposes of Act.]

9. [As to fractional parts of five pounds.]

10. [Stock and debenture stock of Gas Light Company credited under Act to form part of existing stocks.]

11. [Stock and debenture stock of Gas Light Company to be equivalent for all purposes to stock and debenture stock of West Ham Company.]

12. [Exchange of certificates.]

13. [Transfers of stock or debenture stock of West Ham Company to operate as transfers of stock or debenture stock of Gas Light Company.]

14. [As to dividend on stock of West Ham Company to 31st December, 1909.]

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15. [Repeal of unexercised powers of West Ham Company of raising capital and borrowing.]

16. Subject to the provisions contained in this Act the Acts relating to or affecting the Gas Light Company and their undertaking at the date of transfer shall apply to the whole undertaking of the Gas Light Company and that Company may exercise within the Gas Light district and within the West Ham district all or any of the powers rights privileges and authorities conferred by the said Acts in relation to the Gas Light district or any part thereof.

17. [As to testing place at Canning Town.]

18. [As to testing of gas in West Ham District.]

19. [Certain testing places to be deemed for certain purposes within West Ham District.]

20. [Pending actions etc.]

21. [Contracts to be binding.]

22. [Collection of outstanding debts.]

23. [West Ham Company's books to be evidence as to holders of stock and debenture stock.]

24. [Books etc. to remain evidence.]

25. [Officers of West Ham Company to be accountable for books etc.]

26. [As to directors.]

27. [Compensation to directors and auditors of West Ham Company.]

28. [As to officers of West Ham Company.]

29. [West Ham Company to carry on undertaking until date of transfer.]

30. [West Ham Company not to increase staff or salaries.]

31. [Gas Light Company to continue to pay pensions.]

32. [For protection of Corporation of West Ham.]

33. [Confirming scheduled agreement with Chigwell Loughton and Woodford Gas Company.]

34. As from the date of transfer section 19 (Fixing maximum price of common gas with sliding scale as to dividend) of the Gas Light and Coke Company Act 1876 section 15 (Sliding scale as to dividend on ordinary stock) and section 16 (Application of net profits after providing for dividends on preference stocks) of the Gas Light and Coke Company's (Capital Consolidation) Act 1898 and section 8 (Alteration of standard price and sliding scale as to dividend) of the Gas Light and Coke Company's Act 1903 shall be and the same are hereby repealed and the following provisions shall have effect in lieu thereof (that is to say):—

(1) The standard rate of dividend on the ordinary stock of the Gas Light Company shall be four pounds per centum per annum

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subject to increase or reduction in accordance with the scale herein-after set forth.

(2) The standard price to be charged by the Gas Light Company for Gas supplied by them shall be three shillings and two pence per thousand cubic feet Provided that the Gas Light Company may increase or reduce the price charged by them for gas above or below the standard price subject to a reduction or increase in the dividend payable by the Gas Light Company on their ordinary stock as follows :

In respect of any half year ending on the thirtieth day of of June or thirty-first day of December during any part of which the price charged by the Gas Light Company shall have been one penny or part of a penny above the standard price the dividend payable by the Gas Light Company shall in respect of each penny or part of a penny by which the standard price shall have been increased be reduced below the standard rate of dividend by one shilling and fourpence on every one hundred pounds of ordinary paid-up capital and so in proportion for any fraction of one hundred pounds ;

And in respect of any such half year as aforesaid during the whole of which the price charged by the Gas Light Company shall have been one penny or more below the standard price the dividend payable by the Gas Light Company may in respect of each penny by which the standard price shall have been reduced be increased above the standard rate by one shilling and fourpence on every one hundred pounds of ordinary paid-up capital and so in proportion for any fraction of one hundred pounds ;

Provided that if the dividend payable in respect of any half year shall include a fractional amount less than one quarter per centum the Gas Light Company may defer the payment of such fractional amount until the payment of the next or some succeeding dividend and shall in the discretion of the Gas Light Company either add such fractional amount to and pay the same with such succeeding dividend accordingly or add the same to the reserve fund ;

The maximum price charged by the Gas Light Company to private consumers during any half year is in this section called the "authorised price of gas" and the dividend on the ordinary stock of the Gas Light Company for the time being distributable in respect of any half year in accordance with the foregoing scale is in this Act called the "authorised rate of dividend" :

(3) The net profits of the Gas Light Company which remain after providing for the dividends on the several preference stocks of that company shall be applicable in the first place in paying rateably and without preference or priority a dividend up to

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three pounds ten shillings per centum per annum on the three and a half per centum maximum stock of the Gas Light Company and up to two pounds sixteen shillings per centum per annum on the ordinary stock of that company The three and a half per centum maximum stock shall not in any half year be entitled to any dividend in excess of the rate of three pounds ten shillings per centum per annum but any surplus profits available after the payment of the said dividends at the rate of three pounds ten shillings and two pounds sixteen shillings per centum per annum on the three and a half per centum maximum stock and the ordinary stock respectively shall be applicable in payment of further dividends on the ordinary stock up to the amount permitted by law :

In any half year in which the authorised price of gas does not exceed three shillings and eleven pence per thousand cubic feet and the authorised rate of dividend on the ordinary stock does not fall below the rate of two pounds sixteen shillings per centum per annum the rate of dividend distributable on the three and a half per centum maximum stock shall continue to be three pounds ten shillings per centum per annum but if in any half year the authorised price of gas exceeds three shillings and eleven pence per thousand cubic feet or the authorised rate of dividend on the ordinary stock falls below the rate of two pounds sixteen shillings per centum per annum then for every increase in such half year of one penny in the authorised price of gas above three shillings and eleven pence per thousand cubic feet or fall in that half year of one shilling and fourpence in the authorised rate of dividend on the ordinary stock the rate of dividend on the three and a half per centum maximum stock shall be reduced by one shilling and eight pence.

Subject to the provisions of this section the making of dividends on the three and a half per centum maximum stock and on the ordinary stock shall be subject to the provisions of the Companies Clauses Consolidation Act 1845 with respect to the making of dividends.

35.—(1) Section 21 (If profits exceed the amount limited excess to be invested and form an insurance fund) section 22 (Application of excess of profits over standard rate of dividend) and section 23 (Power to create a reserve fund out of dividends in excess of the standard rate of dividend and application thereof) of the Gas Light and Coke Company Act 1876 shall respectively be read and have effect as if the words "half year" were substituted therein for the word "year" wherever that word occurs in those sections.

(2) The said sections 21 and 22 shall respectively be read and have effect as if the expression "authorised rate of dividend" were substituted therein for the expression "standard rate of dividend."

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(3) The said section 23 shall be read and have effect as if the expression "authorised rate of dividend" were substituted therein for the expression "standard rate of dividend" where that expression secondly occurs in the said section.

36. For the purposes of section 9 (Redemption fund) of the Gas Light and Coke Company's Act 1903 the average of the two half-yearly dividends which the Company shall in any calendar year in accordance with the provisions of this Act be entitled to or shall distribute shall be deemed to be the dividend which they shall be entitled to or shall in respect of that calendar year distribute.

37. The insurance fund and the reserve fund of the West Ham Company shall respectively be added to and form part of the insurance fund and the reserve fund of the Gas Light Company.

38. As from the passing of this Act sub-section (1) of section 4 (Illuminating power) of the London Gas Act 1905 shall be read and have effect as if the word "fourteen" were substituted therein for the word "sixteen."

39.—(1) As from the 1st day of January one thousand nine hundred and ten the standard calorific power of the gas supplied by the Gas Light Company within the Gas Light district and the West Ham district shall be one hundred and twenty-five calories net per cubic foot (the expression "calories" being used in this Act as meaning calories net per cubic foot) but the Gas Light Company shall not incur any liability in the event of their supplying gas of a calorific power of not less than one hundred and twelve and one-half calories.

(2) One testing only for calorific power shall be made at each testing place daily but in the event of the calorific power being on any testing ascertained to be below one hundred and twelve and one-half calories the gas examiner shall forthwith give notice thereof to the Gas Light Company and a second testing shall be made at an interval of not less than one hour from the time of making the first testing at that testing place and the average of the two testings shall be deemed to be the calorific power of the gas at such testing place on that day.

40. The following provisions shall apply with respect to the testing for calorific power of the gas supplied by the Gas Light Company within the administrative county of London and to forfeitures in respect of deficient calorific power of such gas:—

(1) If on any one day the gas supplied by the Gas Light Company at any testing place is of less calorific power to an extent not exceeding six calories than one hundred and twelve and one-half calories the average of the testings for calorific power made at such testing place on that day and on the preceding day and on the following day shall be deemed to represent the calorific power of the gas on such one day at such testing place:

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(2) The Gas Light Company shall not be liable to any forfeiture for defective calorific power where the calorific power on any day of the gas supplied by them is not less than one hundred and twelve and one-half calories but where the calorific power on any day of such gas is less than such last-mentioned quantity the Gas Light Company shall be liable to the following forfeitures in respect of such deficiency (that is to say) :—

Where the deficiency does not exceed three calories five pounds ;

Where the deficiency exceeds three calories but does not amount to six calories a sum not exceeding ten pounds ;

For each complex six calories of defective power a sum not less than twenty-five pounds and not exceeding one hundred pounds ;

Provided always that the controlling authority of any testing place having recovered one forfeiture in respect of defective calorific power in the gas supplied by the Gast Light Company at one testing place on any day shall not be entitled to any further forfeiture in respect of defective calorific power in the gas supplied by the Gas Light Company at any other testing place of such controlling authority on the same day Provided also that no forfeiture shall be incurred in any case with respect to which it is certified by the chief gas examiner that the defect of calorific power was occasioned by an unavoidable cause or accident :

(3) Section 10 (Company may be represented at testings) of the Act of 1880 shall with respect to the Gas Light Company be read and have effect as if calorific power were therein referred to in addition to illuminating power purity and pressure :

(4) Section 11 (Daily reports and access to books) of the Act of 1880 shall in relation to the Gas Light Company extend and apply with respect to the testings for the purposes of this section.

(5) Section 13 (Quarterly report of chief gas examiner) of the Act of 1880 shall in relation to the Gas Light Company be read and have effect as if there were added at the end thereof " (4) The calorific power on each day at each testing place of the controlling authority " :

(6) The provisions of section 19 (Forfeitures and losses from fraud etc.) and section 20 (Recovery of forfeitures etc. 23 & 24 Vict. c. 125) of the Act of 1880 shall extend and apply to forfeitures under this section and to the recovery thereof :

(7) The following provisions of the Act of 1905 shall extend and apply to and for the purposes of the testing for calorific power of

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the gas supplied by the Gas Light Company within the administrative county of London (that is to say) :—

Sub-sections (1) and (4) of section 5 (As to testing for calorific power sulphur impurities and illuminating power with flat-flame burner) so far as such sub-sections relate to testings for calorific power ;

Section 9 (Appeal by company to chief gas examiner against prescription or certification of gas referees) ;

Section 10 (Sunday testing) ;

Section 11 (Amendment of section 12 of Act of 1880) ;

Section 12 (Further powers to chief gas examiner as to forfeitures) ;

Section 13 (As to hearing in absence of parties) ;

Section 15 (Penalty for neglect to comply with prescriptions of gas referees) ;

Section 16 (Proceedings in case of forfeiture) ;

Section 17 (Proof of report etc. of chief gas examiner) ;

Section 18 (As to service of notices) ;

but subsections (2) (3) and (5) of the said section 5 shall not apply for the said purposes:

(8) Section 14 (Amendment of section 18 of Act of 1880) of the Act of 1905 shall extend and apply to and for the purposes of this section as if the words "defective calorific power" had been inserted therein after the words "defective illuminating power."

41. The following provisions shall apply with respect to the testing for calorific power of the gas supplied by the Gas Light Company within the West Ham district and to forfeitures in respect of deficient calorific power of such gas :—

(1) The Gas Light Company shall within six months from the date of transfer or from the date of the provision of the testing place (whichever shall be the later) cause to be provided at each of the prescribed testing places within the West Ham district apparatus for testing the calorific power of the gas supplied by the Gas Light Company at such testing place and the said apparatus and the mode of making the tests shall be the same as shall from time to time be prescribed by the gas referees appointed under the City of London Gas Act 1868 for testing the gas supplied by the Gas Light Company within the Metropolis :

(2) The gas examiner of the controlling authority may at any testing place of that authority test at any hour of the day or night the calorific power of the gas supplied by the Gas Light Company at such testing place :

(3) If on any one day the gas supplied by the Gas Light Company at any such testing place is of less calorific power to an extent not exceeding six calories than one hundred and twelve and one-half calories the gas examiner of the controlling authority shall (if the controlling authority contemplate proceeding for a forfeiture) make at such testing place a testing of the calorific power of such gas on each of the two following days and the average of the three testings so made shall be deemed to represent the calorific power of the gas on such one day at such testing place :

(4) The Gas Light Company shall not be liable to any forfeiture for defective calorific power where the calorific power on any day of the gas supplied by them at any such testing place is not less than one hundred and twelve and one-half calories but where the calorific power on any day of such gas is less than such last-mentioned quantity the Gas Light Company shall be liable to the following forfeitures in respect of such deficiency (that is to say) :—

Where the deficiency does not exceed three calories five pounds ;

Where the deficiency exceeds three calories but does not amount to six calories a sum not exceeding ten pounds ;

For each complete six calories of defective power a sum not exceeding twenty pounds :

(5) The provisions of section 31 of the Gasworks Clauses Act 1871 shall apply to any testing made under this section :

(6) For the purposes of this section section 33 of the Gasworks Clauses Act 1871 shall be construed as if calorific power were therein referred to in addition to illuminating power and purity.

42. If within one month after the expiration of a period of three years from the first day of January one thousand nine hundred and ten or after the expiration of any subsequent period of three years either the Gas Light Company or the London County Council or the mayor aldermen and commons of the City of London in common council assembled shall desire that the standard calorific power prescribed by the section of this Act of which the marginal note is "Calorific power of gas supplied shall be reduced or increased and shall give to the other parties and to the Board of Trade notice in writing of such desire it shall be lawful for the Board of Trade after hearing the parties and considering any representations made to them by any of the said parties by order to reduce or increase the amount of the said standard calorific power and of the deficiency below such standard within which the Gas Light Company are not to be liable to forfeitures or either of such amounts to such extent as to the said Board may seem fit and the said Board may by such order make all such modifications of this

Sect. 42. Act as may be necessary in consequence of any such reduction or increase as aforesaid and may also direct the manner in which the costs charges and expenses of the said parties and of the said Board of and incidental to any such application and any inquiry held by or under the direction of the said Board in connexion therewith shall be borne.

43. The Gas Light Company shall at any time within two years after the first day of January one thousand nine hundred and ten if and when required by any consumer of gas supplied by the Gas Light Company (other than a consumer by prepayment meter) supply to him and fix free of charge a sufficient number of burners suitable in all respects for the consumption of gas of the illuminating power prescribed by this Act in substitution for the burners in use before the said first day of January The Gas Light Company shall also as soon as reasonably practicable after the said first day of January one thousand nine hundred and ten and at the latest within a period of twelve months thereafter exchange the burners used by consumers of gas supplied by the Gas Light Company by means of prepayment meters for burners similarly suitable for the consumption of gas of the illuminating power prescribed by this Act.

Notice of the provisions of this section shall be given on each demand note of the Gas Light Company sent out during the first-mentioned period of two years.

44. Section 39 of the scheme for the amalgamation of the London Gas Light Company with the Gas Light and Coke Company confirmed by Order in Council dated the twenty-second day of May one thousand eight hundred and eighty-three shall be read and have effect as if the words "fourteen candle gas" were therein inserted in lieu of the words "sixteen candle gas."

See as to this scheme the INTRODUCTION at p. 66.

45. [Remuneration of directors.]

46. In the event of any meter used by a consumer of gas being tested in manner provided by the Sale of Gas Act 1859 and being proved to register erroneously within the meaning of the said Act such erroneous registration shall be deemed to have first arisen during the then last preceding quarter of the year unless it be proved to have first arisen during the then current quarter. The amount of the allowance to be made to or of the surcharge to be made upon the consumer by the Gas Light Company shall be paid by or to that Company to or by the consumer as the case may be and shall be recoverable in the like manner as gas charges are recoverable by the said Company.

47. [Repeal of Acts.] (These Acts related to the West Ham Company.)

48. [Persons in employ of Gas Light Company may nominate others to transfer stock etc. held by such persons.]

49. [Costs of Act.]

METROPOLIS GAS.

NOTIFICATION OF THE GAS REFEREES.

In former editions of this work the current Notification of the Gas Referees was set out here *in extenso*. Seeing, however, that it can be obtained from the King's Printers for 1*s*. 6*d*., it was felt that it might be omitted.

MODEL GAS BILL.

AS AMENDED, 1910.

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MODEL GAS BILL.*

Incorporation of Acts.

1. The following Acts and parts of Acts are hereby incorporated with this Act (namely):

The Companies Clauses Consolidation Act, 1845 (except the provisions relating to the conversion of borrowed money into capital), Part I. (relating to cancellation and surrender of shares), and Part III. (relating to debenture stock) of the Companies Clauses Act 1863, as amended by subsequent Acts; and

The Gasworks Clauses Acts 1847 and 1871: Provided that s. 13 of the former Act shall be read as if the words "or any premises" were inserted after the words "private building" and as if the words "Provided also that every such contract entered into by the company shall be alike in terms and amount under like circumstances to all consumers" were added at the end of that section.

Interpretation.

2. In this Act the several words and expressions to which meanings are assigned by the Acts wholly or partially incorporated herewith shall have the same respective meanings, unless there be something in the subject or context repugnant to such construction.

The expression "the Company" shall mean the Company incorporated by this Act:

The expression "the works" the "gasworks" and "the undertaking" shall respectively mean and include the gasworks and works connected therewith by this Act vested in or authorised to be made or maintained by the company, and any improvement thereof which they may construct under the powers of this Act and the lands buildings estate right title property privileges and effects and the undertaking of the company and every part thereof respectively.

Limits of Act.

3. The limits of this Act shall be

Incorporation of company.

4. [*Incorporation of Company.*]

General purposes of company.

5. The company shall be established for the purpose of manufacturing and supplying gas for lighting heating motive power and other purposes within the limits of this Act, and may provide produce sell dispose of and deal in gas coke tar and all other residual products resulting from the manufacture of gas and generally may carry on the business usually carried on by a gas company.

CAPITAL.

[*Here insert clauses as to capital, issue of shares and calls.*]

Power to company to raise additional capital.

6.† The Company may from time to time raise additional capital, not exceeding in the whole pounds, by the creation and issue of new ordinary shares or stock, or new preference shares or stock, or wholly or partially by one or more of those modes respectively, but the Company shall not issue any share of less nominal value than ten pounds: Provided that it shall not be lawful for the Company to create and issue under the powers

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* Clauses 4 to 17 and 22 of this Part are not applicable to bills of local authorities; clauses 1 to 3, 18 to 21, 23 to 37 may be applied with the necessary modifications.

† Applicable only to existing companies.

Clause 6.

of this Act any greater nominal amount of capital than shall be sufficient to produce including any premium which may be obtained on the sale thereof the sum of pounds: *Provided also that the Company shall not create and issue within the year following the passing of this Act any greater nominal amount of capital than shall be sufficient to produce in manner aforesaid pounds, or within any subsequent year pounds: Provided also that the Company shall not raise by the issue of preference shares or stock a greater amount of such additional capital than pounds.*

Prior to 1908 a provision was inserted in this clause to the effect that shares or stock should not vest until the full price should have been paid.

If authorised capital for any year not raised, amount may be made up in subsequent years.

7. *If in any year or years the Company have not created and issued capital to the full amount hereinbefore prescribed in relation to such year or years, they may in any subsequent year create and issue, in addition to the amount prescribed for such year such a nominal amount of capital as shall be sufficient together with the amount then raised to produce in manner aforesaid pounds in respect of the year following the passing of this Act, and pounds in respect of every subsequent year then expired.*

Power to borrow.

8. The Company may, subject to the provisions of this Act, borrow on mortgage of the undertaking any sum or sums not exceeding in the whole *one-third* part of the amount of the [additional] capital which at the time of borrowing had been raised under the powers of this Act. But no sum shall be borrowed in respect of any capital so raised until the Company have proved to a justice of the peace, before he gives his certificate under the fortieth section of the Companies Clauses Consolidation Act, 1845, that the whole of the stock or shares at the time issued, together with the premium (if any) realised on the sale thereof, have been fully paid up.

In the Model Bill for 1908 the words in this clause after the word "[additional]" were as follows:—"Capital by this Act authorised to be raised, and at the time actually issued by shares or stock but no part thereof shall be borrowed until the whole of the shares or stock at the time issued together with the premium (if any) realised on the sale thereof shall have been fully paid up, and the Company have proved to the justice who is to certify under the fortieth section of the Companies Clauses Consolidation Act 1845, before he so certifies, that such shares and stock and premium (if any) have been issued and fully paid up, and upon production to such justice of the books of the Company and of such other evidence as he shall think sufficient he shall grant a certificate that the proof aforesaid has been given, which certificate shall be sufficient evidence thereof.

Application of money.

9. All moneys raised under this Act *including premiums* shall be applied only to purposes to which capital is properly applicable, and any sum of money which may arise by way of premium from the issue of shares *or stock* under the provisions of this Act shall not be considered as part of the capital of the undertakers entitled to dividend.

The above clause was in 1908 re-introduced (in part) from some former editions of the Model Bill.

[*Then insert the clauses—Priority of money already borrowed on mortgage debenture stock clauses, and clauses as to general meetings, and directors.*]

LIMITATION OF PROFITS.

Profits of the company limited. (Standard rates of dividend.)

10. Except as by this Act provided the profits of the Company to be divided among the shareholders in any year shall not exceed the following rates (which are in this Act referred to as the standard rates of dividend), that is to say, on the original capital the rate of ten pounds in respect of every one hundred pounds of such capital, and on the additional capital to be raised under the powers of this Act the rate of seven pounds in respect of every one hundred pounds actually paid up of such capital as shall be issued as ordinary capital, and the rate of *five* pounds in respect of every one hundred pounds actually paid up of such capital as shall be issued as preference capital.

Clause 11.

Dividends on different classes of stock or shares to be paid proportionately.

11. In case in any half year the funds of the Company applicable to dividend shall be insufficient to pay the full amount of dividend at the prescribed maximum rate on each class of ordinary stock or shares in the capital of the Company a proportionate reduction shall be made in the dividend of each class.

Power to create a special purposes fund.*

12.—(1) The Directors of the Company may if they think fit in any year appropriate out of the revenue of the Company as part of the expenditure on revenue account any sum not exceeding an amount equal to one per cent. of the paid-up capital of the Company, including premiums to a fund to be called the "Special Purposes Fund."

(2) The Special Purposes Fund shall be applicable only to meet such charges as a chartered accountant or incorporated accountant, being the auditor of the company or appointed for the purpose by the Board of Trade shall approve as being—

(*a*) expenses incurred by reason of accidents strikes or circumstances which due care and management could not have prevented, or

(*b*) expenses incurred in the replacement or removal of plant or works other than expenses requisite for maintenance and renewal of plant and works.

(3) The maximum amount standing to the credit of the Special Purposes Fund shall not at any time exceed an amount equal to one-tenth part of the paid-up capital of the Company including premiums.

(4) The moneys forming the Special Purposes Fund or any portion thereof may be invested in securities in which trustees are authorised by law to invest or may be applied for the general purposes of the Company to which capital is properly applicable, or may be used partly in the one way or partly in the other.

(5) Resort may from time to time be had to the Special Purposes Fund notwithstanding that the sum standing to the credit of the fund is for the time being less than the maximum allowed by this section.

(6) [†The money or securities standing to the credit of the Insurance Fund of the Company at the passing of this Act shall be credited to the Special Purposes Fund, and section of the Act of is hereby repealed.

This clause was in 1908 substituted for previous clauses relating to insurance and renewal funds.

If profits exceed the amount limited, excess may be invested and form an insurance fund.

13. If the clear profits of the undertaking of the Company in any year amount to a larger sum than is sufficient to pay [the dividend on the preference capital and] the dividend at the authorised *rate* on the ordinary capital of the Company, the excess shall be carried to the credit of the divisible profits of such undertaking for the next following year.

Provided that the sum standing to the credit of such divisible profits shall not at any time exceed the amount required to pay one year's *dividend* at the authorised *rate.*

This clause was amended in 1908, and is again amended as regards the proviso which in 1908 ran as follows: "Provided that the sum so carried forward shall not in any case exceed the amount required to pay one year's dividend at the authorised rate."

Power to create a reserve fund.

14. Where in any year the dividend of the Company on the ordinary capital of the Company shall exceed the standard rate by reason of the price charged by the Company for gas in such year being below the standard price,

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* This clause is not applicable except where there is a sliding scale.

† Insert where an insurance fund already exists and repeal section authorising creation of that fund.

Clause 14.

then out of the amount of the divisible profits of the Company applicable to the payment of such excess of dividend the Company may in such year set apart such sum as they shall think fit, and all sums (if any) so set apart by the Company, and any reserve or other fund of the Company existing at the passing of this Act, may be invested in Government or other securities, and the dividends and interest arising from such securities may also be invested in the same or the like securities, in order that the same may accumulate at compound interest; and the fund so formed shall be called "the Reserve Fund," and shall be applicable to the payment of dividend in any year in which the clear profits of the Company shall be insufficient to enable the Company in such year to pay the dividend at the authorised rate on the ordinary capital of the Company, and save as in this Act provided no sum shall in any year be carried by the Company to any reserve fund.

AUCTION CLAUSE.*

New shares or stock to be sold by auction or tender.

15.—(1) All shares or stock created under the powers of this Act shall be issued in accordance with the provisions of this section.

(2) All shares or stock so to be issued shall be offered for sale by public auction or tender in such manner, at such times, and subject to such conditions of sale as the company shall from time to time determine. Provided as follows:

(*a*) Notice of the intended sale shall be given in writing to the town clerk of   and to the secretary of the London Stock Exchange at least twenty-eight days before the day of auction, or the last day for the reception of tenders as the case may be, and shall also be duly advertised once in each of two consecutive weeks in one or more local newspapers circulating within the said *borough*:

(*b*) A reserve price shall be fixed, and notice thereof shall be sent by the Company in a sealed letter to be received by the Board of Trade not less than twenty-four hours before, but not to be opened till after, the day of auction or last day for the receipt of tenders as the case may be:

(*c*) No lot offered for sale shall comprise shares or stock of greater nominal value than one hundred pounds:

(*d*) In the case of a sale by tender no preference shall be given to one of two or more persons tendering the same sum; in the case of a sale by auction a bid shall not be recognised unless it is in advance of the last preceding bid:

(*e*) It shall be one of the conditions of sale that the total sum payable by the purchaser shall be paid to the company within three months after the date of the auction or of the acceptance of the tender as the case may be.

(3) Any shares or stock which have been so offered for sale and are not sold may be offered at the reserve price to the holders of ordinary [*and preference] shares or stock of the Company in accordance with the provisions of sections 18, 19, and 20 of the Companies Clauses Act, 1863, and to the employees of the Company, and to the consumers of gas supplied by the Company, in such proportions as the Company may think fit or to one or more of these classes of persons only: provided, in the case of an offer to holders of shares or stock, that if the aggregate amount of shares or stock applied for shall exceed the aggregate amount so offered as aforesaid the same shall be allotted to and distributed amongst the applicants as nearly as may be in proportion to the amounts applied for by them respectively.

(4) Any shares or stock which have been offered for sale in accordance with subsection (2) or with subsections (2) and (3) and are not sold, shall be again offered for sale by public auction or by tender in accordance with

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* This clause is also applicable to Bills of water companies.

Clause 15.

the provisions of this section, and any such shares or stock then remaining unsold may be otherwise disposed of at such price and in such manner as the directors may determine for the purpose of realising the best price obtainable.

(5) As soon as possible after the conclusion of the sale or sales, the company shall send a report thereof to the Board of Trade, stating the total amount of the [*respective] shares or stock sold, the total amount obtained as premium (if any), and the highest and lowest prices obtained for the [*respective] shares or stock.

This is the form of auction clause which was adopted in Bills of 1908.

CONSTRUCTION OF WORKS.

Powers as to construction and maintenance of gasworks, etc.

16. Subject to the provisions of this Act, the *Company* may upon the lands described in the Schedule to this Act erect maintain alter improve enlarge extend and renew or discontinue gasworks retorts gasometers receivers mains pipes stop-cocks machinery and other works and apparatus and conveniences, and may do all such acts as may be proper for making and storing gas and for supplying gas within the limits of this Act, and may make store and supply gas accordingly, and may manufacture sell provide supply and deal in coke tar and all other residual products or refuse of any materials employed in or resulting from the manufacture of gas.

[*Clause—Power to lay pipes in streets not dedicated to public use* (see *Water Clauses, cl.* 23) *is applicable also to gas.*]

LANDS.

Power to purchase lands by agreement.

17. The *Company* may for the purposes of their undertaking purchase take and hold (by agreement but not otherwise) in addition to the lands described in the Schedule to this Act any lands and hereditaments not exceeding in the whole   acres which the *Company* may require for the purposes of their works and undertaking; but the *Company* shall not create or permit a nuisance on any such lands, and no lands shall be used by the Company for the purpose of manufacturing gas or residual products except the lands described in the Schedule to this Act.

Prescribed period for sale of lands.

18. *The prescribed period for the sale of superfluous lands within the meaning of section* 127 *of the Lands Clauses Consolidation Act,* 1845, *shall be   years from the passing of this Act.*

SUPPLY OF GAS.

Limit of price.

19. The price to be charged by the *Company* for gas supplied by them to persons who shall burn the same by meter shall not not at any time exceed   per thousand cubic feet.

Alternative (in Companies' Bills)—Sliding Scale.

Dividend dependent on price charged.

20. The standard price to be charged by the Company for gas supplied by them shall be   per thousand cubic feet:

Provided that the Company may increase or reduce the price charged by them for gas above or below the standard price, subject to a reduction or increase in the dividend payable by the Company on the ordinary share capital or stock as follows:—

In respect of any year during any part of which the price charged by the Company shall have been one penny or part of a penny above the standard price the dividend payable by the Company shall in respect of each penny or part of a penny by which the standard price shall have been increased be reduced below the standard rate of dividend by five shillings on every one hundred pounds of ordinary paid-up capital *with a ten per centum standard rate of dividend, and by three*

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* Omit words in brackets where there are no preference shares or stock.

shillings and sixpence on every one hundred pounds of such capital with a seven per centum standard rate of dividend, and so in proportion for any fraction of one hundred pounds; **Clause 20.**

And in respect of any year during the whole of which the price charged by the Company shall have been one penny or more below the standard price, the dividend payable by the company may in respect of each penny by which the standard price shall have been reduced, be increased above the standard rate by five shillings on every hundred pounds of ordinary paid-up capital *with a ten per centum standard rate of dividend, and by three shillings and sixpence on every one hundred pounds of such capital with a seven per centum standard rate of dividend*, and so in proportion for any fraction of one hundred pounds.

21. *The *Company* may if they think fit allow discounts or rebates to consumers of gas in consideration of prompt payment of gas charges not exceeding in any case ten per centum, and in addition thereto or irrespective thereof they may if they think fit allow discounts or rebates to large consumers not exceeding in any case fifteen per centum: Provided that all discounts or rebates shall be of equal amount under like circumstances to all consumers: Provided also that notice of the effect of this enactment shall be endorsed on every demand note for gas charges. Discounts.

22.—(1) The *Company* may demand for any gas supplied through a prepayment meter a not greater charge than for gas supplied to private consumers within their limits of supply through any other kind of meter or by any other method of supply. Charge for gas supplied by means of prepayment meters.

(2) The *Company* shall not charge for the hire of any prepayment meter and fittings to be used therewith any sum other than a sum of money calculated according to the quantity of gas supplied through such prepayment meter, and the maximum sum to be so charged shall be at the rate of tenpence per one thousand cubic feet supplied in manner aforesaid, such sum to include the hire of meter and the fittings used therewith, or at the rate of one shilling per one thousand cubic feet, if such fittings include a cooking stove.

The said charge shall include the providing letting fixing repairing and maintenance of the meters and fittings and the cost of collection and other costs incurred by the *Company* in connection with the meter and fittings.

(3) The maximum charge for the hire of a prepayment meter without fittings shall be at the rate of ten per centum per annum on the cost of the meter.

(4) For the purpose of this section the expression "prepayment meter" means any meter or appliance by which the quantity of gas supplied is regulated according to the amount of money prepaid therefor.

23. The prescribed number of candles shall be not less than *fourteen*. Quality of gas.

24. For the purposes of the Gasworks Clauses Act, 1871, the prescribed testing place shall be a testing place which shall be provided by the *Company* on the lands described in the schedule to this Act [*or otherwise described position*] before supplying or within three months after beginning to supply gas under the authority of this Act. Testing place.

25.—(1) The quality of the gas supplied by the *Company* shall with respect to its illuminating power be such as to produce, at the testing place when burned at the rate of five cubic feet per hour, a light equal in intensity to the light produced by *fourteen* sperm candles of six to the pound, each consuming 120 grains of sperm per hour, and shall be in all respects in accordance with the provisions of the Gasworks Clauses Act, 1871. Testing quality.

(2) For testing the illuminating power of the gas the burner to be used shall be that known as the Metropolitan Argand No. 2, the photometer shall Burner.

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* This clause is not required where s. 13 of the Gasworks Clauses Act, 1847, is amended, as appears in clause 1, p. 262.

Clause 25. be the Bar Photometer (*or the Table Photometer*), the standard light shall be that supplied by Harcourt's Ten-candle Pentane lamp, and in making the test the burner shall be so used as to obtain from the gas when burned at the rate aforesaid the greatest amount of light: provided that the Board of Trade may on the application of the *Company* or the local authority (**the Council or any five consumers*) approve the use of any other burner, photometer, or standard light which may appear to the Board to be equally or more suitable for the testing.

(3) The *Company* shall before supplying or within three months after beginning to supply gas under this Act provide all the apparatus required by this Act for the testing of gas and shall at all times keep the same in proper order and repair.

Pressure.

26.—(1) All gas supplied by the *Company* to any consumer of gas shall be supplied at such pressure as to balance a column of water not less than eight-tenths of one inch in height at the main or as near as may be to the junction therewith of the service pipe supplying the consumer.

(2) Any gas examiner appointed under the Gasworks Clauses Act, 1871, may, for the purposes of this Act, subject to the terms of his appointment, at the testing place or at any public lamp†, as and when he thinks fit, test the pressure at which the gas is supplied. The *Company* shall afford to the examiner all reasonable facilities for making the test.

Saving as to penalties.

27. No penalty shall be incurred by the *Company* for insufficiency of pressure, defect of illuminating power, or excess of impurity in the gas supplied by them in any case in respect of which it is proved that such insufficiency, defect, or excess was produced by any circumstance beyond the control of the *Company*. Provided that the want of sufficient funds shall not be held to be a circumstance beyond the control of the *Company*.

As to construction and placing of pipes, etc., between mains and meters.

28. In order to enable the *Company* to ensure a satisfactory supply of gas to their consumers the following provisions shall have effect:—

(1) The *Company* may specify the size and material of the pipes with the fittings thereof which are to be laid by the consumer, either in the first instance or on the occasion of any renewal, between the *Company's* mains and the meter and (so far as the same are intended to be covered over) on the consumer's premises:

(2) The *Company* may if they think fit make different specifications for different classes of premises having regard to the probable maximum consumption of gas thereon at any one time:

(3) The specifications shall be published twice in some newspaper (once in each of two newspapers) circulating within the limits of supply, and a copy thereof shall be kept exhibited in the office of the *Company*:

(4) Every meter to be used in a new building, or a building not previously supplied with gas, or in connection with a new or substituted pipe laid by the consumer between the main and the consumer's meter, shall be placed as near as reasonably practicable to the *Company's* main but within the outside wall of the building:

(5) When any such pipe or meter as aforesaid has been laid or placed, notice thereof shall be given to the *Company* and the pipe shall not be covered over until after the expiration of twenty-four hours from the service of such notice on the *Company*; Any officer of the *Company* duly appointed may between nine o'clock in the morning and five o'clock in the afternoon attend and inspect such pipes (with their fittings) and meter, and if the officer is not permitted to make

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* Substitute these words in local authorities' Bills.

† In cases where there are no public lamps, provision may be made for testing elsewhere than at the testing place.

Clause 28.

the inspection, or if the pipes or fittings are not according to the *Company's* specification, or if the meter is not placed as required by this section, the *Company* may refuse to supply gas to the premises until the provisions of this section have been complied with :

(6) Any person to whom the *Company* refuses a supply of gas under the provisions of this section may appeal to a petty sessional court against such refusal, and the court may after hearing the parties and considering any questions as to the reasonableness of the *Company's* specifications make such order as seems to them proper in the circumstances, and may order by which of the parties the costs of and incident to the appeal shall be paid.

Company to pay interest on money deposited as security for gas meter, etc.

29. If any person is required by the *Company* to give to them security for any supply of gas or for the payment of the price or rent of a meter, and such security is made by way of deposit, the *Company* shall pay interest after the rate of *four* pounds per centum per annum on every sum of ten shillings deposited by way of such security for every six months during which the same remains in their hands.

Power to supply gas fittings, etc.

30.—(1) The *Company* may sell let for hire fix repair and remove but shall not manufacture engines stoves ranges pipes and other fittings for lighting for motive power for the warming and ventilating of houses and buildings for the cooking of food and for all other purposes for which gas can or may be used, and may provide all materials and work necessary or proper in that behalf, and with respect thereto may demand and take such remuneration or rents and charges, and make such terms and conditions, as may be agreed upon.

(2) Any fittings let for hire under the provisions of this section shall not be subject to distress or to the landlord's remedy for rent or be liable to be taken in execution under process of any court or proceedings in bankruptcy against the person in whose possession the same may be : Provided that such fittings are marked or impressed with a sufficient mark or brand indicating the *Company* as the actual owners thereof.

(3) *Provided as follows :—

(*a*) It shall not be lawful for the *Corporation* to expend money (except through a contractor) upon the provision of such fittings or of labour and materials required for the fixing repairing or removal thereof upon or from the premises of their consumers or prospective consumers:

(*b*) The *Corporation* shall so adjust the charges to be made by them for any such fittings, or for the fixing repairing or removal thereof as to meet any expenditure by them under the powers of this section in connexion therewith (including interest upon moneys borrowed for those purposes and all sums applied to sinking fund for repayment of moneys so borrowed) :

(*c*) Every sum charged by the *Corporation* in respect of the provision of such fittings or the fixing repairing or removal thereof shall be separately stated on every demand note delivered by the Corporation to the consumer :

(*d*) The total sums expended and received by the *Corporation* in connexion with the purposes in this section mentioned in each year (including interest and sinking fund) shall be separately shown in the published accounts of the gas undertaking of the *Corporation* for that year.

Gas consumers to give notice to company before removing.

31. At least twenty-four hours' notice in writing shall be given to the *Company* by every gas consumer before he shall quit any premises supplied with gas by meter by the *Company*, and in default of such notice the consumer so quitting shall be liable to pay to the *Company* the money accruing

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* This proviso is for insertion in Bills of local authorities.

Clause 31. due in respect of such supply up to the next usual period for ascertaining the register on the meter on such premises, or the date from which any subsequent occupier of such premises, shall require the *Company* to supply gas to such premises whichever shall first occur. Notice of the effect of this enactment shall be endorsed upon every demand note for gas charges payable to the *Company*.

Power to refuse supply to persons in debt for other premises.

32. If a person requiring a supply of gas from the *Company* has previously quitted premises at which gas was supplied to him by the *Company* without paying to them all gas charges and meter rent due from him to the *Company*, they may refuse to furnish to him a supply of gas until he pays the same.

Notice to discontinue supply of gas.

33. A notice to the *Company* from a consumer for the discontinuance of a supply of gas shall not be of any effect unless it be in writing signed by or on behalf of the consumer and be left at or sent by post to the office of the *Company*.

Period of error in defective meters.

34. In the event of any meter used by a consumer of gas being tested in manner provided by the Sale of Gas Act 1859 and being proved to register erroneously within the meaning of the said Act, such erroneous registration shall be deemed to have first arisen during the then last preceding quarter of the year unless it be proved to have first arisen during the then current quarter. The amount of the allowance to be made to or of the surcharge to be made upon the consumer by the *Company* shall be paid by or to the *Company* to or by the consumer as the case may be, and shall be recoverable in the like manner as gas charges are recoverable by the *Company*.

SUPPLY OUTSIDE LIMITS.

Company may contract with local authority, etc., for supply in bulk.

35. The *Company* may contract with any local authority company or persons authorised to supply gas under Parliamentary powers in any district adjacent to the *Company's* limits of supply for the supply to them respectively of gas in bulk upon such terms and conditions and for such periods not exceeding in any case seven years from the making of the contract as may be agreed upon, but nothing in this section shall authorise the *Company* to lay any mains or interfere with any street beyond their limits of supply.

SCHEDULE REFERRED TO IN THE FOREGOING ACT.

[*Insert description and extent of all lands on which gas and residual products may be manufactured by the Company.*]

MODEL CLAUSE RELATING TO SALE OF PLANT OUTSIDE DISTRICT (WATER AND GAS),

(*Taken from Model Bill* (*No.* 9 *of the Miscellaneous Clauses*) *as amended*, 1910.)

If at any time after the passing of this Act any local authority whose district is beyond the district of the *Council*, but as to the whole or any part thereof within their limits for the supply of water [gas], shall give not less than six months' notice in writing to the *Council* of their desire to purchase such portion of the waterworks [gasworks] and plant of the *Council* as is contained within the district of any such local authority, and shall obtain the consent of the Local Government Board to such purchase, and shall apply to Parliament or the Local Government Board for power to purchase such portion of the waterworks [gasworks] and plant of the *Council* (except the reservoirs mains and pipes or other apparatus which shall be necessary for supplying with water [gas] any other part of the limits of the *Council* for the supply of water [gas]) and to supply water [gas] within such district, then it shall not be lawful for the *Council* to oppose such application (except as to the details thereof), and if such powers of purchase and supply be granted, the *Council* shall sell and such local authority shall purchase the portion of the waterworks [gasworks] and plant of the *Council* (except as

Clause 35.

aforesaid) within the district of such local authority at such price being a sum in gross and upon such terms and conditions as shall be fixed in default of agreement by arbitration under the provisions of the Lands Clauses Acts. Any such purchase shall be deemed to be a purpose of the Public Health Act 1875 except so far as the same may be otherwise provided for by Parliament. *The Council shall apply the proceeds of any sale under this section in the same manner as they are required to apply money received from sales of land under this Act.* Provided that after the completion of such purchase all obligations on the part of the *Council* to supply water [gas] within the district of the purchasing authority shall cease and determine.

MODEL CLAUSE RELATING TO COSTS OF ARBITRATION UNDER LANDS CLAUSES ACTS.

(*Taken from Model Bill* (*No.* 27 *of the Miscellaneous Clauses*) *as amended,* 1910.)

The tribunal to whom any question of disputed purchase money or compensation under the Act is referred shall if so required by the *Corporation* award and declare whether a statement in writing of the amount of compensation claimed has been delivered to the *Corporation* by the claimant giving sufficient particulars and in sufficient time to enable the *Corporation* to make a proper offer and if the tribunal shall be of opinion that no such statement giving sufficient particulars and in sufficient time shall have been delivered and that the *Corporation* has been prejudiced thereby the tribunal shall have power to decide whether the claimant's costs or any part thereof shall be borne by the claimant:

Provided that it shall be lawful for any judge of the High Court to permit any claimant after seven days' notice to the *Corporation* to amend the statement in writing of the claim delivered by him to the *Corporation* in case of discovery of any error or mistake therein or for any other reasonable cause such error mistake or cause to be established to the satisfaction of the judge after hearing the *Corporation* if they object to the amendment and such amendment shall be subject to such terms enabling the *Corporation* to investigate the amended claim and to make an offer de novo as to postponing the hearing of the claim and as to costs of the inquiry and otherwise as to such judge may seem just and proper under all the circumstances of the case:

Provided also that this section shall be applicable only in cases where the notice to treat under the Lands Clauses Consolidation Act 1845 either contained or was endorsed with a notice of the effect of this section.

ABSTRACTS

OF THE

WATERWORKS CLAUSES ACTS, 1847 AND 1863.

WATERWORKS CLAUSES ACT, 1847.

(10 & 11 VICT. C. 17.)

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WATERWORKS CLAUSES ACT, 1847.

(10 & 11 VICT. c. 17.)

An Act for consolidating in one Act certain Provisions usually contained in Acts authorising the making of Waterworks for supplying Towns with Water. [23rd April, 1847.]

Preamble repealed by Statute Law Revision Act, 1891 (54 & 55 Vict. c. 67).

Extent of Act.

[1.] This Act shall extend only to such waterworks as shall be authorised by any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith; and all the clauses of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, with the clauses of every other Act which shall be incorporated therewith, form part of such Act, and be construed therewith as forming one Act.

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Special Acts, in incorporating this general Act, usually contain a saving similar to that above expressed.

A difficult point of construction arose in *Metropolitan Water Board* v. *New River Co.* (1904), 20 T. L. R. 687, in consequence of an inartistic incorporation of this Act in the New River Company's Act, 1852 (see p. 519), and the speeches of the learned Law Lords as to the meaning which should be given to expressions used in the special Act and in this Act should be carefully considered.

Interpretation in this Act:

And with respect to the construction of this Act, and any Act incorporated therewith, be it enacted as follows:—

"Special Act:" "Prescribed:" "The lands and streams:" "The undertaking:" "The undertakers:"

2. The expression "the special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed authorising the construction of waterworks, and with which this Act shall be incorporated; and the word "prescribed" used in this Act in reference to any matter herein stated shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word occurs shall be construed as if instead of the word "prescribed" the expression "prescribed for that purpose in the special Act" had been used; and the expression "the lands and streams" shall mean the lands and streams of water which shall by the special Act be authorised to be taken or used for the purposes thereof; and the expression "the undertaking" shall mean the waterworks, and the works connected therewith, by the special Act authorised to be constructed; and the expression "the undertakers" shall mean the persons by the special Act authorised to construct the waterworks.

See definition of "lands" and of "streams" in the next section.

Interpretations in this and the special Act.

3. The following words and expressions in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

Number:

Words importing the singular number shall include the plural number, and words importing the plural number only shall include also the singular number:

The Scarborough Public Market Company obtained a special Act whereby they were authorised to "erect a market-house." The Act having incorporated the Markets and Fairs Clauses Act, 1847 (10 & 11 Vict. c. 14), which contains a similar interpretation clause, the Lords Justices of Appeal decided that the company might lawfully construct two distinct buildings or market-houses (*Richards* v. *Scarborough Public Market Co.* (1853), 23 L. J. Ch. 110). See now the Interpretation Act, 1889 (52 & 53 Vict. c. 63), which (repealing and superseding the 13 & 14 Vict. c. 21) enacts that words in the singular shall include the plural, and words in the plural shall include the singular.

Gender:

Words importing the masculine gender shall include females:

"Person:"

The word "person" shall include a corporation, whether aggregate or sole:

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"Lands :" The word "lands" shall include messuages, lands, tenements, and hereditaments, or heritages of any tenure :

"Streams :" The word "streams" shall include springs, brooks, rivers, and other running waters :

"Street :" The word "street" shall include any square, court, or alley, highway, lane, road, thoroughfare, or public passage or place, within the limits of the special Act :

See *Maddock* v. *Wallasey Local Board*, cited under the same definition in the Gasworks Clauses Act, 1847, at p. 159, *ante.*

As to whether dock quays come within this definition, see *Bristol Waterworks Co.* v. *Mayor, etc. of Bristol* (1889), 5 T. L. R. 203, 551 (C. A.).

Where a local authority supply water to their district under the provisions of the Public Health Act, 1875, they have the same powers in regard to water mains as they have with regard to sewers, and the definition of "street" under that Act is wide enough to include a private road (*Hill* v. *Wallasey Local Board*, [1894] 1 Ch. 133).

"The waterworks :" The expression "the waterworks" shall mean the waterworks, and the works connected therewith, by the special Act authorised to be constructed :

"Water rate :" The expression "water rate" shall include any rent, reward, or payment to be made to the undertakers for a supply of water :

"Month :" The word "month" shall mean calendar month :

"Superior courts :" The expression "superior courts," where the matter submitted to, the cognisance of the court arises in England or Ireland, shall mean Her Majesty's superior courts of record at Westminster or Dublin, as the case may require, . . . and where such matter arises in Scotland, it shall mean the Court of Session :

Certain words omitted were repealed by the Statute Law Revision Act, 1891 (54 & 55 Vict. c. 67).

"Oath :" The word "oath" shall include affirmation in the case of Quakers and any declaration lawfully substituted for an oath in the case of any other person allowed by law to make a declaration instead of taking an oath :

See Oaths Act, 1888 (51 & 52 Vict. c. 46).

"County :" The word "county" shall include riding or other division of a county having a separate commission of the peace ; and in Scotland . . . any . . . division of a county . . . having a separate sheriff ; and it shall also include county of a city or county of a town :

Certain words omitted were repealed by the Statute Law Revision Acts, 1891 and 1893 (54 & 55 Vict. c. 67, and 56 & 57 Vict. c. 14), respectively.

"Justice :" The word "justice" shall mean justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises ; and if such matter arise in respect of lands or streams situated not wholly in one jurisdiction shall mean a justice acting for the county or place where any part of such lands or streams shall be situated; and where any matter is authorised or required to be done by two justices, the expression "two justices" shall be understood to mean two or more justices met and acting together:

"Two justices:"

See the notes to s. 3 of the Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), p. 159.

The word "sheriff" shall mean the sheriff depute of the county . . . in Scotland in which the matter submitted to the cognizance of the sheriff arises, and shall include the substitutes of such sheriff depute:

"Sheriff:"

Certain words omitted were repealed by the Statute Law Revision Acts, 1891 and 1893 (54 & 55 Vict. c. 67, and 56 & 57 Vict. c. 14), respectively.

The expression "quarter sessions" shall mean quarter sessions as defined in the special Act; and if such expression be not there defined it shall mean the court of general or quarter sessions of the peace which shall be held at the place nearest to the waterworks, or the principal office thereof, for the county or place in which the waterworks, or the principal office thereof, is situate, or for some division of such county having a separate commission of the peace:

"Quarter sessions:"

The expression "the town commissioners" shall mean the parties defined under that title in the special Act, and where no such parties shall be there defined shall mean the commissioners, trustees, or other parties having the control or management of the streets under any Act for paving or improving the town or district to be supplied with water under the special Act:

"The town commissioners:"

The word "inspector" shall mean an officer appointed under any local Act relating to the town or district supplied with water under the special Act for the purpose of inspecting or superintending works connected with the paving, drainage, or supply of water of such town or district, or an officer appointed under any general Act for executing the like duties with respect to such town or district together with other towns or districts:

"Inspector:"

As to this clause generally, see the Interpretation Act, 1889 (52 & 53 Vict. c. 63), and notes, *ante*, p. 161.

And with respect to citing this Act, or any part thereof, be it enacted as follows:

Citing the Act.

4. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be enough to use the expression "the Waterworks Clauses Act, 1847."

Short title of this Act.

The Act of 1863, s. 1, provides that that and this Act may be cited together as the Waterworks Clauses Acts, 1847 and 1863.

5. For the purpose of incorporating part only of this Act with any Act hereafter to be passed, it shall be enough to describe the clauses

Form in which portions of this

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Act may be incorporated in other Acts.

of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act, with the exception of the clauses so described, shall be incorporated with such Act; and thereupon all the clauses of this Act so incorporated shall, save so far as they are expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.

Construction of Waterworks.

And with respect to the construction of the waterworks, be it enacted as follows:

Construction of waterworks to be subject to the provisions of this Act and the Lands Clauses Consolidation Act, 1845.

6. Where by the special Act the undertakers shall be empowered, for the purpose of constructing or supplying waterworks, to take or use any lands or streams otherwise than with the consent of the owners and occupiers thereof, they shall, in exercising the power so given to them, be subject to the provisions and restrictions contained in this Act, and, if the waterworks be situated in England or Ireland, to the provisions and restrictions contained in the Lands Clauses Consolidation Act, 1845, and, if the waterworks be situated in Scotland, the provisions and restrictions contained in the Lands Clauses Consolidation, Scotland, Act, 1845; and shall make to the owners and occupiers of and all other parties interested in any lands or streams taken or used for the purposes of the special Act, or injuriously affected by the construction or maintenance of the works thereby authorised, or otherwise by the execution of the powers thereby conferred, full compensation for the value of the lands and streams so taken or used, and for all damage sustained by such owners, occupiers, and other persons, by reason of the exercise, as to such lands and streams, of the powers vested in the undertakers by this or the special Act, or any Act incorporated therewith; and, except where otherwise provided by this or the special Act, the amount of such compensation shall be determined in the manner provided by the said Lands Clauses Consolidation Acts respectively for determining questions of compensation with regard to lands purchased or taken under the provisions thereof; and all the provisions of the said last-mentioned Acts respectively shall be applicable to determine the amount of any such compensation, and to enforce payment or other satisfaction thereof.

See s. 3 for definition of "lands" and "streams."

The "provisions and restrictions" of the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), above referred to, are contained in ss. 16 *et seq.* of the Act, which is printed *in extenso, post.* The corresponding Act for Scotland is the 8 & 9 Vict. c. 19.

Compensation.

While the section in the text provides for "full compensation" to "the owners and occupiers of, and *all other parties interested* in any lands or streams taken or used" or "*injuriously affected* by the construction or maintenance of the works, or otherwise by the execution of the powers thereby conferred," such compensation being not only for the value of the lands and streams so taken or used, but also *for all damage sustained* by such owners, etc., by reason of the exercise, as to such lands and streams, of the powers of the undertakers, —the 12th section further enacts that the undertakers "shall make full compensation *to all parties interested* for all damage sustained by them through the exercise of such powers."

The section in the text places the taking of streams upon the same footing as the taking of lands under the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18). When the whole of a stream is taken under this Act it is a taking of land within the meaning of the Lands Clauses Act, and therefore a notice to treat must be given, and those from whom the water is taken are not left to the remedy of compensation for damage sustained. Where, however, the water of a stream is only partly taken, then compensation for damage sustained is the proper remedy. A waterworks company was restrained from diverting a stream belonging to the plaintiff without first paying compensation for the same, or making deposit and giving a bond in accordance with the provisions of that Act (*Ferrand* v. *Mayor of Bradford* (1856), 21 Beav. 412). The Master of the Rolls considered, in this case, that s. 6 distinguishes between "taking and using" and "injuriously affecting," and that the diversion of a stream is a "taking and using" within the meaning of the Lands Clauses Act; and, therefore, that before such diversion can be effected the value of the stream must be ascertained and secured to the owners of the land through which it passes. And in *Stone* v. *Corporation of Yeovil* (1876), 2 C. P. D. 99, where a corporation, having power to purchase and divert the whole of a stream, had given notice of their intention to do so, but afterwards sought to limit their liability to compensation for damage sustained, the Court of Appeal decided that they were bound and empowered to make compensation at once for the whole value of the interest of the owners of the mill on the stream, and not merely to compensate them from time to time for injuriously affecting the property. In *Bush* v. *Trowbridge Waterworks Co.* (1875), L. R. 10 Ch. 459, the company diverted part only of a stream, and the plaintiff sought an injunction to restrain them until they gave a notice to treat and paid compensation. The lords justices held that he was not entitled to be treated with under s. 6 for the purchase of his interest (as in the two preceding cases), but only to compensation under s. 12 for the damage sustained. *Cf. Bradford Corporation* v. *Pickles*, [1895] A. C. 587. In *Page* v. *Kettering Waterworks Co.* (1892), 8 T. L. R. 228, the company, under their Act of 1889, took a certain amount of water from two brooks which fell into another stream, which fell into the Ise. The great bulk of the water thus taken, after being used for drainage purposes in Kettering, again fell into the Ise above the mills of the plaintiff. The plaintiff claimed compensation on the footing of a "taking" of so much water without crediting what was returned into the stream. The court held that the taking could not be considered a purchase under the Lands Clauses Act of so much water, but that the plaintiff was entitled to compensation to the extent to which he was injuriously affected; and thus the water returned had to be taken into account.

The Belfast Water Commissioners were empowered by their Act of 1865 to purchase or take on lease certain streams and waters referred to in deposited plans, including the W., D., and F. streams, by which last-mentioned streams the mill of G. and S., mill-owners, was worked. The Act limited seven years from its date for the execution by the commissioners of their statutory powers, and it contained provisions analogous to those of the Lands Clauses Act for the ascertainment of purchase-money, and of compensation payable to riparian proprietors, and for the sale by the commissioners of superfluous lands, waters, or other property. G. and S. claimed compensation for the W., D., and F. streams, and traversed the award of the arbitrator as insufficient. An agreement was then entered into to take a verdict by consent, at a certain sum agreed upon for the interests of G. and S., "in the waters required for the purposes of the Act, their property, for compensation for injury to other premises held by the traversers, and for all rights, easements, and powers affecting the property of the traversers, acquired for the purposes of the Act, and for all consequential damage." The sum agreed on was paid to G. and S., who subsequently conveyed and assigned their mill and premises to the plaintiffs. The commissioners did not within the period limited by the Act of 1865 divert or take any portion of the D. stream;

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but in 1874 they obtained a further Act authorising additional works to be executed according to plans, varying from those referred to in the Act of 1865, and, in carrying out the powers of the Act of 1874, the commissioners found it necessary to divert the whole of the D. stream:—*Held*, that the commissioners had, under the Act of 1865, absolutely purchased all the water rights of G. and S., that the property so acquired remained in them, notwithstanding the expiration of the period of seven years from the Act of 1865, and that the commissioners were entitled, without any further compensation to the plaintiffs as assignees of G. and S., to appropriate and divert the water of the D. and F. streams for the purposes of the works contemplated by the Act of 1874 (*Girdwood* v. *Belfast Water Commissioners* (1877), 1 L. R. Ir. 28).

Where by a company's special Act all rights of proprietors not specially provided for by the Act are reserved, the remedy of a riparian proprietor injured by the fouling of a stream by the company's works, is under the general law, and not under this Act (*Clowes* v. *Staffordshire Potteries Waterworks Co.* (1872), L. R. 8 Ch. 125).

The right to compensation given by the above section and s. 12, *post*, p. 435, is not, by reason of the heading of the group of sections to which these sections belong, limited to compensation for damage caused during the construction of the waterworks, but extends to damage caused by the taking of water for the purposes of the waterworks after completion. The defendant corporation were empowered by a special Act, which incorporated the Waterworks Clauses Act, 1847, to construct waterworks for the purpose of supplying water in a certain district. By pumping water from a well for the purpose of supplying the district, the corporation abstracted wet running silt from under the plaintiff's land, with the result that his house and land were damaged by subsidence. It was held that the plaintiff was entitled to recover compensation under ss. 6 and 12 of the Act (*Fletcher* v. *Birkenhead Corporation*, [1907] 1 K. B. 205).

Injuriously affecting lands, etc.

The following are some instances of "injuriously affecting" within the meaning of the Lands Clauses Consolidation Act:—*Mortimer* v. *South Wales Rail. Co.* (1859), 1 E. & E. 375, where the defendants partially diverted water which flowed into the plaintiff's tan yard; *Ware* v. *Regent's Canal Co.* (1858), 3 De G. & J. 212, where occasional flooding of the plaintiff's lands was caused by works of the defendants properly executed; *Little* v. *Dublin and Drogheda Rail. Co.* (1857), 7 L. R. Ir. 82, where the defendants diverted a stream which a farmer used for irrigation and watering his cattle; *R* v. *Nottingham Old Waterworks Co.* (1837), 6 A. & E. 355, where the removal of a weir by the defendants impeded the plaintiff's mill, and lessened its value; *R.* v. *North Midland Rail. Co.* (1840), 2 Rail. Cas. 1, where the defendants raised the level of a brook into which the sough of a coal mine had been wont to empty itself, and thereby caused the water of the brook to flow into the sough, and inundate and stop the coal works; *R.* v. *Commissioners of the Navigation of the Thames and Isis* (1836), 5 A. & E. 804, where the defendants made a cut in the river, by which barges were enabled to avoid a part of the river on which was an ancient towing path, and so to deprive the owner of the tolls, etc. In *R.* v. *Bristol Dock Co.* (1810), 12 East, 429, it was decided that the owners of a brewery were not entitled to compensation for loss arising to them in their business from the deterioration of the water of the public river Avon, from which the brewery had been before supplied by means of pipes laid under low-water mark, the use of the water being common to all the King's subjects, and not claimed as an easement to the particular tenement.

By s. 43 of the Kirkcaldy and Dysart Waterworks Act, 1867 (30 & 31 Vict. c. cxxxix.), it was provided that the commissioners under the Act "should be bound to make good to the Countess of Rothes and her heirs, etc., all damages which may be occasioned to her or them, by reason of, or in consequence of, any bursting, or flow or escape of water from any reservoir, or aqueduct or pipe, or other work connected therewith," which may be constructed by the commissioners. The countess was proprietrix of lands situated below the site of one of the reservoirs, and during an extraordinary rainfall a great quantity of water was continuously discharged from the reservoir through a waste weir into the watercourse of a burn, and did much damage to her lands. She claimed compensation. There was no failure or insufficiency of the works, and no negligence :—*Held*, reversing the decision of the court below (Lord BLACKBURN dissenting), that on the construction of the above clause, the countess was entitled to compensation for damage by flood waters from the reservoir, no matter how caused. *Per* Lord WATSON : Statutory provisions, such as here, in a local and personal Act must be regarded as a contract between the parties, whether made by their mutual agreement, or forced on them by the legislature (*Countess of Rothes* v. *Kirkcaldy and Dysart Waterworks Commissioners* (1882), 7 App. Cas. 694). See the comment of STIRLING, J., on this case in *In re Manchester and Milford Rail. Co.*, [1897] 1 Ch. 276.

Mines.

Mines are lands within the meaning of the section in the text. In claims in respect of the non-working of mines adjoining the railway or works, ss. 6 and 78 of the Railway Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20) (corresponding to ss. 6 and 22 of the Waterworks Clauses Act, 1847), must be construed together. Section 6 gives a general right to compensation to "owners and occupiers of and all other parties interested in lands taken or injuriously affected by the construction" of the railway. In s. 78 the person entitled to give notice to the company of his intention within thirty days to work a mine is the "owner, lessee, or occupier," who has the right and the power to work it. The company are entitled to have an inspection of the mine, and to offer compensation to him for not working, which compensation may be settled as therein mentioned. The compensation thus settled is that to which he is individually entitled, according to the extent of his interest. If the lessee is the person thus giving notice and receiving compensation, the owner, if he can show a right of his own beyond that of his lessee who has been compensated, is also entitled to compensation under s. 6. See *Smith* v. *G. W. Rail. Co.* (1877), 3 App. Cas. 165 ; and *Holliday* v. *Mayor, etc. of Wakefield*, [1891] A. C. 81.

Compensation in particular cases.

The appellant granted to D. certain mills on a stream forming the outlet of two lochs nearly surrounded by his property, with his "whole rights of water and water power connected with the said mills" ; "reserving" all his "rights in the lochs" and stream, "except the rights therein connected with the mills." The storage capacity of the lochs had been increased by embankments made within the appellant's ground. The respondents, who were waterworks commissioners under a special Act, acquired by agreements the rights of D. in the water, and under their compulsory powers took from the appellant a small piece of ground and a wayleave for a pipe, which they inserted in the stream, and diverted the waters of the lochs to supply a town. Section 9 of the special Act provided that a certain quantity of water sent down the stream daily should be held to be a sufficient compensation to the mill-owners and others. Section 10 reserved, *inter alia*, any rights the appellant had in Loch Humphrey. In a claim for compensation the arbitrator found the appellant entitled (1) to £50 for the land and wayleave ; and (2) "in the event of it being determined that the appellant had retained any right or interest in the waters of the lochs and the streams or any of them, and that he is now entitled to compensation in respect of such right or interest, I find £3,000 to be the amount to be paid" in respect of the right or interest to be acquired from the appellant "in the foresaid waters and the embankments" at the lochs, "including in the said sum of £3,000 the sum of £1,650 as the estimated price or value of the embankments" :—*Held*, reversing the decision of the Court of Session (13 Ct. Sess. Cas., 4th ser., 636), that the award was valid, inasmuch as the arbitrator had valued only one thing, the enhanced value of the water in the lochs, and had not valued, as a separate subject, the embankments, but had properly included in the £3,000, as a factor of value, the incidental right obtained by the respondents to have the embankments left standing (*Lord Blantyre* v. *Babtie* (1888), 13 App. Cas. 631). Where certain streams of water had been abstracted from the appellant's property by a water company acting under the Barbados Water Supply Act, 1886, it was held by the Privy Council that the compensation due to the appellant included the value of his proprietary interest therein, and was not limited to the

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amount of pecuniary benefits obtained by past user thereof in disregard of possible benefits in the future (*Trent-Stoughton* v. *Barbados Water Supply Co.*, [1893] A. C. 502).

Compensation water.

It is provided by Standing Order 185 of the House of Commons that "In the case of every Bill whereby it is proposed to impound the whole or any part of the water of any river or stream, and to give a flow of water in compensation for the water so impounded, the committee on the bill shall inquire into the expediency of making provision, so far as may be practicable, that the whole or a minimum amount of such compensation water shall be given in a continuous flow throughout the twenty-four hours of every day, and shall report to the House accordingly." The House of Lords Standing Order 110A is in the same terms except that the last seven words are omitted. See s. 5 of the Model Water Bill, *post*, and the INTRODUCTION.

See as to the liability to riparian owners for damage caused by the pollution of compensation water from accidental causes, *Edinburgh Water Trustees* v. *Sommerville and Son* (1906), 95 L. T. 217. See also as to the recovery of penalties for breach of statutory duty to supply compensation water the cases of *Beaumont and others* v. *Huddersfield Corporation* and *Meltham Spinning Co.* v. *Huddersfield Corporation*, cited in the INTRODUCTION at pp. 80, 81.

Easement of carrying pipes through lands.

A water company cannot (unless specially authorised by their Act) compel a landowner to sell them the mere easement of laying pipes in and through his land; the landowner is entitled to insist on their taking the whole land *ab infero usque ad cœlum.* A sanitary authority under the Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883 (46 & 47 Vict. c. 37), may purchase the easement and right of support and nothing more. See *post.* Companies purposing merely to tunnel underneath land may be compelled to take the surface as well. See *Ramsden* v. *Manchester, etc. Rail. Co.* (1848), 1 Ex. 723; *Sparrow* v. *Oxford, etc. Rail. Co.* (1852), 2 De G. M. & G., at p. 108; *Macgregor* v. *Metropolitan Rail. Co.* (1866), 14 L. T. (N. S.) 354. But see *Simpson* v. *South Staffordshire Waterworks Co.* (1865), 34 L. J. Ch. 380. Nevertheless, when owners of private land—"land not dedicated to public use," see s. 29—are willing to allow pipes through their land, the parties generally bargain for the easement or wayleave merely. As regards public streets, roads, etc., they are governed by s. 28, which gives the right to lay pipes on certain conditions being observed. Special waterworks Acts generally contain a clause enabling limited owners to grant an easement merely. The following is the usual form:

Power to take easements, etc., by agreement.

> "Persons empowered by the Land Clauses Acts to sell and convey or release lands may, if they think fit, subject to the provisions of those Acts or of this Act, grant to the company any easement, right, or privilege (not being an easement, right, or privilege of water, in which persons other than the grantors have an interest) required for the purposes of this Act in, over, or affecting any such lands, and the provisions of the said Acts with respect to land and rentcharges, so far as the same are applicable in this behalf, shall extend and apply to such grants and to such easements, rights, and privileges as aforesaid respectively."

Manchester Act, 1879.

In exceptional cases, such as those of Manchester, Liverpool, and Birmingham, exceptional provisions were specially conferred to enable easements merely to be taken compulsorily under the Lands Clauses Acts unless the owner insisted on the whole of his interest being acquired. The following section occurs in the Manchester Corporation Waterworks Act, 1879 (42 Vict. c. xxxvi.), which authorised the Thirlmere scheme:

Corporation may acquire easement only in certain lands.

> "69. The corporation may, in lieu of acquiring any lands in the counties of Westmoreland and Lancaster, or either of them (other than the lands required for the new reservoir by this Act authorised to be constructed in the township of Prestwich, in the county of Lancaster), acquire such easements and rights in such lands as they may require for the purpose of constructing, placing, laying, inspecting, maintaining,

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> cleansing, repairing, conducting, or managing the waterworks by this Act authorised, and may give notice to treat in respect of such easements and rights, and may in such notice describe the nature thereof, and the several provisions of the Lands Clauses Consolidation Act, 1845, inclusive of those with regard to arbitration and the summoning of a jury, shall apply to such easements and rights as fully as if the same were lands within the meaning of such Act. Provided always, that nothing herein contained shall authorise the corporation to acquire by compulsion any such easement in any case in which the owner in his particulars of claim shall require the corporation to acquire the lands in respect of which they have given notice to treat for the acquisition of an easement only, and every notice to treat for the acquisition of an easement shall be endorsed with notice of this proviso."

This proviso is omitted from s. 17 of the Manchester Corporation General Powers Act, 1904, which authorises the acquisition of easements only in connection with their further waterworks authorised by that Act.

Liverpool Act, 1880.

The following section occurs in the Liverpool Corporation Waterworks Act, 1880 (43 & 44 Vict. c. cxliii.), which authorised the Vyrnwy scheme:

Corporation may acquire easements only in certain lands.

> "7. The corporation may, in lieu of acquiring any lands for the purpose of any aqueducts, conduits, or pipes by this Act authorised, acquire such easements and rights in such lands as they may require for the purpose of constructing, placing, laying, inspecting, maintaining, cleansing, repairing, conducting, or managing the same, and may give notice to treat in respect of such easements and rights, and may in such notice describe the nature thereof, and the several provisions of the Lands Clauses Consolidation Acts, 1845, 1860, and 1869, inclusive of those with regard to arbitration and the summoning of a jury, shall apply to such easements and rights as fully as if the same were lands within the meaning of such Act. Provided always, that nothing herein contained shall authorise the corporation to acquire by compulsion any such easement in any case in which the owner in his particulars of claim shall require the corporation to acquire the lands in respect of which they have given notice to treat for the acquisition of an easement only, and every notice to treat for the acquisition of an easement shall be indorsed with notice of this proviso. Provided also, that as regards any lands taken or used by the corporation for the purpose of laying aqueducts, conduits, or pipes therein, where such aqueducts, conduits, or pipes are laid underground, the corporation shall not (unless they give notice to treat for such lands, and not merely for easements therein) be required or entitled to fence off or sever such lands from the adjoining lands, but the owners or occupiers for the time being shall at all times, after the completion of the works, have the same rights of passing over such lands for all purposes of or connected with the use or enjoyment of the adjoining lands as if such lands had not been taken or used by the corporation."

Birmingham Act, 1892.

See also s. 7 of the Birmingham Corporation Water Act, 1892 (55 & 56 Vict. c. clxxiii.), which authorised the obtaining of a supply of water from the rivers Elan and Claerwen, and their tributaries in the counties of Cardigan, Radnor, Brecknock, and Montgomery.

Later instances.

In later Water Acts Parliament has followed these precedents, and has allowed the insertion of a clause enabling the undertakers to acquire easements compulsorily under the machinery of the Lands Clauses Act (8 & 9 Vict. c. 18), "unless the owner in his particulars of claim shall require the undertakers to acquire the lands in respect of which they have given notice to treat for the acquisition of an easement only. See *e.g.*, Bury Corporation Water Act, 1899 (62 & 63 Vict. c. lxxxi.), s. 14; Burley-in-Wharfedale Urban District Council Act, 1899 (62 & 63 Vict. c. xx.), s. 15; Crowborough District Water Act, 1899 (62 & 63 Vict. c. xlvi.), s. 12; Derwent Valley Water Act, 1899 (62 & 63 Vict. c. cclxix.), s. 35; Bath Corporation Water Act, 1903) 3 Edw. 7, c. ccvii.) s. 8; Merthyr Tydfil Urban District Council Act, 1903 (3 Edw. 7, c. cxiv.), s. 27; Scunthorpe Urban District Council

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Act, 1903 (3 Edw. 7, c. xciii.), s. 10; Torquay Corporation Water Act, 1903 (3 Edw. 7, c. cvi.), s. 11; Bexhill Water and Gas Act, 1904 (4 Edw. 7, c. lxx.), s. 31; Preston Corporation Water Act, 1904, s. 9; Leeds Corporation (Waterworks) Railway Act, 1904, s. 11; Skipton Water and Improvement Act, 1904, s. 35; Thurles Urban District Council Act, 1904, s. 13; Doncaster Corporation Act, 1904, s. 25; Selby Urban District Council Act, 1904, s. 57; Oakengates and Dawley Joint Water Board Act, 1904, s. 30 (*Cf.* Manchester Corporation (General Powers) Act, 1904, s. 17); Littlestone-on-Sea and District Water Act, 1904, s. 31; Shipley Urban District Council Act, 1904, s. 14; Harrogate Waterworks Tramroad Act, 1904, s. 16; Holderness Water Act, 1908 (8 Edw. 7, c. xcix.), s. 49. And see clause 10 of the Model Water Bill.

Rights incident to easements.

The easement of laying pipes through any land not dedicated to public use may be acquired by agreement (see s. 29, *post*, p. 463). When so acquired, the company tacitly acquire also the right to enter upon those lands from time to time as occasion may reasonably require, in order to renew or repair their pipes. Whoever grants a thing is supposed also tacitly to grant that without which the grant itself would be of no effect (11 Rep. 52). See also the express terms of s. 29, *post*, on this subject. In *Pomfret* v. *Ricroft* (1680), 1 Wms. Saund. 321, TWYSDEN, J., observed, "If a man gives me a licence to lay pipes of lead in his land to convey water to my cistern, I may afterwards enter and dig the land to mend the pipes, though the soil belongs to another and not to me." On the same ground, it has been decided in America that the grant of a right to build a dam carries with it a right to enter and repair the dam and cleanse the pond (*Fraily* v. *Waters* (1847), 7 Barr. (Pennsylvania) 221; Angell on Watercourses, s. 158). The same principle would necessarily apply in the case of the grant of a right to construct a reservoir. On this subject see also *per* Lord ELLENBOROUGH, C.J. in *Hodgson* v. *Field* (1806), 7 East, at p. 622; *Hinchliffe* v. *Earl of Kinnoul* (1838), 5 Bing. N. C. 1; *Hall* v. *Lund* (1863), 1 H. & C. 676. "Where," says Angell (Watercourses, s. 363), "an easement—as a right to lay aqueduct logs through land—is granted in general terms, without giving definite location and description to it, so that part of the land over which the right is to be exercised cannot be definitely ascertained, the grantee does not thereby acquire a right to use the servient estate without limitation as to the place or mode in which the easement is to be enjoyed. When the right granted has been once exercised in a fixed and definite course, with the full acquiescence and consent of both parties, it cannot be changed at the pleasure of the grantee. If it be admitted that he has the right originally to select the place on which the easement is to be enjoyed, he cannot afterwards alter it. This rule rests on the principle that where the terms of a grant are general or indefinite, so that its construction is uncertain and ambiguous, the acts of the parties, contemporaneous with the grant, giving a practical construction to it, shall be deemed to be a just exposition of the intent of the parties." Where the owner of land on the bank of a river, for the purpose of bringing water from the river to a mill which he erected, made a watercourse with a shuttle at the head of it to control the flow of the water from the river into the watercourse, and afterwards conveyed away a portion of his land adjoining, and his successor in title subsequently granted to the owner of the adjoining land so conveyed a right to use the water for the purposes of a mill belonging to him:—*Held*, that the existence of that right did not affect the obligation of the owner of the watercourse towards the owner of the adjoining land to keep the shuttle in repair so as to prevent flood water from the river getting into the watercourse and overflowing on to his land; *Pomfret* v. *Ricroft*, *supra*, discussed; (*R. H. Buckley & Sons, Ltd.* v. *N. Buckley & Sons*, [1898] 2 Q. B. 608).

Jurisdiction of conservators under Salmon Fishery Acts.

The Salmon Fishery Act, 1865 (28 & 29 Vict. c. 121), provides that the limits of a river shall be defined, and a fishery district shall be formed for the purpose of the Salmon Fishery Acts by the certificate of a secretary of state, and by s. 3 "river" is defined to include "such portion of any stream with its tributaries" as may be declared in the certificate. In *Harbottle* v. *Terry* (1882), 10 Q. B. D. 131, it was held that the reservoirs of the Newcastle and Gateshead Waterworks Company were not "tributaries" of the Tyne, and therefore not subject to the jurisdiction of the board of conservators for the district. In *George* v. *Carpenter*, [1893] 1 Q. B. 505, a similar decision was come to in regard to the Vyrnwy reservoir, which was held not to be within the jurisdiction of the conservators of the Severn fishery district. A similar decision was given in *Stead* v. *Nicholas*, [1901] 2 K. B. 163. *Cf. Moses* v. *Iggo*, [1906] 1 K. B. 516. A water bailiff appointed under the Salmon Fishery Acts is bound, before attempting to exercise his power of searching boats, etc., used in fishing, to produce the instrument of his appointment (*Barnacott* v. *Passmore* (1887), 19 Q. B. D. 75). As to the byelaws of such conservators, see *Pidler* v. *Berry* (1888), 59 L. T. 230).

General rule as to water company's liability for damage.

The general rule as to the liability of waterworks companies and other bodies having parliamentary powers, in respect of damage caused by their operations, is thus summarised: "Where water is diverted or regulated for public purposes under Act of Parliament, as by conservators of a river, a waterworks or canal company, the authorities managing the water are not liable to an action for its escape, though caused by them, unless they exceed their powers, or are negligent in the execution of them; though the party injured may be entitled to compensation if the Act so provides" (Gale on Easements, 6th ed., p. 415). Accordingly, in the case of *Cracknell* v. *Mayor and Corporation of Thetford* (1869), L. R. 4 C. P. 629, the defendants having been empowered by a private Act of Parliament to render navigable the river Brandon, and to take tolls for the purpose of repaying the necessary expense and having, in the exercise of their powers under the Act, erected staunches in the river, and the result of these, combined with the natural growth of the weeds in the river and the accumulation of silt against the staunches, being that the river overflowed its banks and damaged the plaintiff's land; it was held, that there was no obligation on the defendants to cut the weeds or dredge the silt, unless it was necessary to do so for the benefit of the navigation; and that the plaintiff's remedy, if any, was not by action against them for not doing so, but by applying for compensation under the Act. See also *Parrett Navigation Co.* v. *Robins* (1842), 10 M. & W. 593. These cases are to be distinguished from that class of cases of which *Bagnall* v. *L. & N. W. Rail. Co.* (1862), 1 H. & C. 544, may be cited as an instance. In that case Willes, J., in delivering the judgment of the Court, said: "In this case the conjoint effect of the making of the defendant's cutting and of their neglect to keep their drains in proper order has been that large quantities of water which but for the cutting would not have come near the plaintiff's mine, and but for the defective state of the drains would have passed away and been carried off without injury to the mine, poured down into and damaged the mine." For the damage so done the plaintiff was held entitled to recover, and it was also held that such damage was not the subject of compensation under the compensation clauses of the Railways and Lands Clauses Acts, 1845 (8 & 9 Vict. c. 20; 8 & 9 Vict. c. 18). The authorities will be found fully discussed in *Geddis* v. *Proprietors of Bann Reservoir* (1878), 3 App. Cas. 430, which case establishes the further principle, that "if by a reasonable exercise of the powers either given by statutes to the promoters, or which they have at common law, the damage could be prevented, it is, within this rule, 'negligence' not to make such reasonable exercise of their powers": *per* Lord Blackburn, at p. 456. In that case a company was authorised by its special Act to construct a reservoir, to divert into it the water of the river Muddock, and of other streams, and from the reservoir to supply through the channel of the Muddock sufficient water to enable the mills on the river Bann to be worked at all seasons of the year; and these works they executed without negligence and in due exercise of their parliamentary powers. In consequence of these works, the channel of the Muddock near the plaintiff's land become choked, and, for want of cleansing, incapable of discharging the increased volume of water so sent through it, and the plaintiff's land was thereby flooded and injured. The Act contained a clause enabling the company to scour, cleanse, etc. The House of Lords (reversing 11 Ir. R. C. L. 160—Exch. Ch.) held that the company were liable for the injury done. In a later case, Lindley, M.R., thus put the principle decided in the above case: "The defendants flooded the plaintiffs' land, and said, in effect, that they could not help it. The answer was that they could help it if they kept a stream, into which they poured water, free from obstruction

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by mud, which they could do if they chose" (*Southwark and Vauxhall Water Co.* v. *Wandsworth District B. of W.*, [1898] 2 Ch. at p. 608). "It has been determined over and over again that if a person or a body of persons having statutory authority for the construction of works (whether those works were for the benefit of the public or for the benefit of the undertakers and partly for the good of the public) exceeded or abused the powers conferred by the legislature, the remedy of a person injured in consequence, was by action or suit and not by a proceeding for compensation under the statute which had been so trangressed. Powers of that sort were to be exercised with ordinary care and skill and with some regard to the property and rights of others. They were granted on the condition sometimes expressed and sometimes understood—expressed in the Act of 1890, but if not expressed always understood—that the undertakers shall do as little damage as possible in the exercise of their statutory powers." *Baroda, Gaekwar of* v. *Gandhi Kachrabhai Kasturchand*, [1903] L. R. 30, Ind. App. 60, *per* Lord MACNAGHTEN. (See also *Managers of Metropolitan Asylum District* v. *Hill* (1881), 6 App. Cas. 193; and *Dixon* v. *Metropolitan B. of W.* (1881), 7 Q. B. D. 418, cited *infra*; *National Telephone Co.* v. *Baker*, [1893] 2 Ch. 186; and *L. B. & S. C. Rail. Co.* v. *Truman* (1885), 11 App. Cas. 45; *East Fremantle Corporation* v. *Annois*, [1902] A. C. 213; *Benning* v. *Ilford Gas Co.*, Jl. of G. L., August 9th, 1904, p. 401. *Cf. Canadian Pacific Rail. Co.* v. *Parke*, [1899] A. C. 535).

By a local Act of 1859, s. 7, the Corporation of York was authorised to abandon the navigation of the river Foss, which they had previously purchased; to alter the channel, and to remove locks or works connected with the navigation; but, before removing any locks, the corporation was to make due provision for the escape or disposal of the water held up by such locks, or theretofore accustomed to flow along or into the channel of the navigation, so as to prevent the same from overflowing or otherwise damaging the adjacent lands. By s. 19, the corporation, at their own expense, was to make, and for the period of five years maintain, such arches, drains, and passages as should in consequence of any alteration of the navigation be necessary and sufficient to convey the water from the lands adjoining the navigation into the river. The corporation abandoned the navigation, and made alterations, the effect of which was that if the channel remained in the state it then was, due provision was made for the escape of the water. They, however, took no measures to prevent the navigation from becoming silted up and choked with weeds, and, in consequence, the land adjoining the river, about a mile above the alterations, was flooded during an extraordinary rainfall, and the grass was damaged. It was held that the corporation was not responsible for this damage (*Hodgson* v. *York* (*Mayor, etc.*) (1873), 28 L. T. 836). See, however, the provisions of s. 14 of the Land Drainage Act, 1847, and *Finch* v. *Bannister*, [1908] 2 K. B. 441, decided thereunder, as to the liability to scour streams of occupiers of lands through which they pass or on which they abut.

In *Dunn* v. *Company of Proprietors of Birmingham Canal Navigation* (1872), L. R. 8 Q. B. 42, it appeared that the defendants duly constructed a canal under parliamentary powers. The owners of underlying minerals gave notice of their intention to work and the defendants declined to purchase. Plaintiff proceeded to work the mines without regard to the surface, and without attempting to support it, and knowing that the effect would be to let down the surface and probably disturb the strata, and that there was danger of the water escaping from the canal; but, except as above, plaintiff did not work his mine in any negligent or unskilful or improper manner, but got the coal in the manner in which that vein of coal is ordinarily got; and without doing so he could not have obtained the full benefit of his coal. The result of the working was that the strata became dislocated, and the water of the canal escaped through the cracks and flooded the workings, and plaintiff was obliged to abandon his coal. It was held (affirming the judgment of the Queen's Bench), that an action of tort could not be maintained. *Semble*, by KELLY, C.B., and PIGOTT, B., that the plaintiff was entitled to compensation under the Act.

A main belonging to a waterworks company burst, and the water flooded the plaintiff's premises, causing considerable damage:—*Held* (distinguishing this case from *Rylands* v. *Fletcher* (1868), L. R. 3 H. L. 330), that the company being authorised by Act of Parliament to lay the main, and having been guilty of no negligence, were not liable in damages to the plaintiffs (*Green* v. *Chelsea Waterworks Co.* (1894), 70 L. T. 547). See a decision to the same effect by HUDDLESTON, B., in *Snook* v. *Grand Junction Waterworks Co.* (1886), 2 T. L. R. 308; and see *Dixon* v. *Metropolitan B. of W.* (1881), 7 Q. B. D. 418, cited *infra* and *post*, p. 397.

A waterworks company obtained statutory powers to take water from a stream and to form a reservoir for impounding the same out of which reservoir they were by the special Act required to send down a certain quantity of compensation water for the benefit of the millowners and others lower down, nothing being provided as to the purity of this compensation water. The reservoir was duly constructed. The successors in title of the water company allowed the water in the reservoir to be drawn off to such a low level that silt which had collected on the bottom rendered the water unfit for the purposes of certain of the millowners, who were papermakers. In an action at the instance of these papermakers it was held by the Court of Session in Scotland that the undertakers were bound to send the compensation water down, free from such pollution as was preventable under a reasonable system of management (*William Sommerville & Son, Ltd.* v. *Edinburgh and District Water Trustees* (1905), 7 F. 1060). On appeal to the House of Lords it was held (*per* the Lord CHANCELLOR and Lords MACNAGHTEN, DAVEY and ATKINSON, Lords JAMES OF HEREFORD and ROBERTSON dissenting), that it was for the millowners to show affirmatively that the powers of the water trustees had not been exercised with reasonable precaution, and that they had failed to do this. Lord JAMES OF HEREFORD and Lord ROBERTSON held that the water trustees had a duty to the millowners in managing the compensation ponds, and that they had failed to discharge it (*Edinburgh and District Water Trustees* v. *William Sommerville & Son, Ltd.* (1906), 95 L. T. 217).

Where negligence the gist of action.

Where a work of a public character (as a canal) has been constructed under the authority of an Act of Parliament, a right of action for an injury not occasioned wilfully, nor by any act necessarily causing it, but arising from the user of the work (as, for instance, through the overflow of the water of the canal), must be founded on negligence, and negligence is the essence of the action; and although the jury has given a verdict for the plaintiff, and it has been proved that the proximate cause of the injury was an act of the company's servants (as raising a flood-gate), yet if it is doubtful whether that act necessarily must have caused the injury, and the jury also finds that there was no negligence, the verdict will be entered for the company (*Whitehouse* v. *Birmingham Canal Co.* (1857), 27 L. J. Ex. 25). See *Blyth* v. *Birmingham Waterworks Co.* (1856), 11 Ex. 781. Where a public body, acting in discharge of a duty cast upon them by Parliament, injure an individual, such injury being the inevitable result of what Parliament has authorised them to do, they are not liable (*Dixon* v. *Metropolitan B. of W.* (1881), 7 Q. B. D. 418). Where the terms of a statute are not imperative, but permissive, the inference is that the legislature intended that the discretion as to the use of the general powers thereby conferred should be exercised in strict conformity with private rights, and therefore no nuisance may be created (*Managers of Metropolitan Asylum District* v. *Hill* (1881), 6 App. Cas. 193). *Cf. Attorney-General* v. *Nottingham Corporation*, [1904] 1 Ch. 673 and *Attorney-General* v. *Rathmines and Pembroke Hospital Board*, [1904] 1 Ir. R. 161. See also *Canadian Pacific Rail. Co.* v. *Parke*, [1899] A. C. 535; *Bendelow* v. *Wortley Union* (1888), 57 L. J. Ch. 762, and compare *L. B. & S. C. Rail. Co.* v. *Truman* (1885), 11 App. Cas. 45. The Tramways Act, 1870 (33 & 34 Vict. c. 78), regulating tramway companies, authorised by statute to use tramcars in the public streets, enacts by s. 55 that "The promoters or lessees, as the case may be, shall be answerable for all accident, damages, and injuries happening through their act or default, or through the act or default of any person in their employment by reason or in consequence of any of their works or

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carriages. . . . ":—*Held*, that s. 55 applies only to a wrongful act or default, and does not make the promoters or lessees answerable for mere accident caused without negligence by their use of tramcars (*Brocklehurst* v. *Manchester, Bury, etc. Steam Tramways Co.* (1886), 17 Q. B. D. 118). A man who creates on his land an electric current for his own purposes, and discharges it into the earth beyond his control, is, on the principle of *Fletcher* v. *Rylands* (1868), L. R. 3 H. L. 330, as responsible for damage caused by that current as he would have been if, instead, he had discharged a stream of water. Where the act is done in pursuance of a provisional order of the Board of Trade, it is protected to the same extent as other nuisances under statutory authority. A tramway company, acting under a provisional order and using the best known system of electrical traction, caused electrical disturbance in the wires of a telephone company acting under licence from the Postmaster-General:—*Held*, that the tramway company were protected from liability for nuisance (*National Telephone Co.* v. *Baker*, [1893] 2 Ch. 186). See also *Eastern and South African Telegraph Co., Ltd.* v. *Cape Town Tramways Co., Ltd.*, [1902] A. C. 381.

Unreasonable use of statutory powers.

A railway company was carrying on work by night as well as by day on the site of a proposed tube station, and the plaintiff alleged that his house was thereby rendered uninhabitable; he claimed damages and an injunction on the ground that the mode of working was a vexatious and unreasonable abuse by the defendants of their statutory powers—negligence was not alleged. On the trial of a preliminary point of law whether an action would lie for mere unreasonableness in the exercise of a statutory power, it was held that, assuming it to be unreasonable to work at night, there was a good cause of action (*Roberts* v. *Charing Cross, etc. Rail. Co.* (1903), 87 L. T. 732, applying *Coats* v. *Clarence Rail. Co.* (1830), 1 Russ. & My. 181).

Negligent construction of works.

If works made lawful by an Act of Parliament be constructed negligently or unskilfully, and damage result, the wrongdoers are liable in damages, notwithstanding the protection of the Act of Parliament under which they acted. "The distinction is now clearly established between damage from works authorised by statutes where the party is generally to have compensation, and the authority is a bar to an action, and damage by reason of the works being negligently done as to which the owner's remedy by way of action remains": *per* CROMPTON, J., in *Brine* v. *G. W. Rail. Co.* (1862), 2 B. & S. 402). And see *Clothier* v. *Webster* (1862), 12 C. B. (N.S.) 790; *Lawrence* v. *G. N. Rail. Co.* (1851), 16 Q. B. 643; and *Mersey Docks Trustees* v. *Gibbs* (1866), L. R. 1 H. L. 93.

Fire-plugs.

As to damage caused by non-maintenance of fire-plugs, etc., in the public streets, see *post*, pp. 480 *et seq.*

Leakage from reservoir.

In an action for injury caused by the leaking of water from a reservoir belonging to a canal, it was pleaded that the damage was caused by the leaking of water through the banks of the reservoir, and not in any manner whatsoever by reason of the execution of the powers of the Act, but by the default of the plaintiffs themselves in sinking shafts and pits in their own land and so causing large quantities of water, which naturally lay in the underground soil in which the pits and shafts were sunk, and which formed the banks and support of the reservoir, to leak out and flow into the shafts and pits; the Court of Common Pleas determined that the plea was bad; ERLE, C.J., remarking, "I think that is a bad plea. The defendants are authorised to collect a large body of water from various springs and sources. Naturally, no such body of water would be collected at this spot, but the defendants are authorised to make such embankments as will be necessary to retain it there. And I think that the duty of the defendants to make compensation for any injury which may arise from the collection of this large body of water is absolute, and that they are responsible for all oozing and leaking that may take place. I think there is no distinction between that part of the reservoir which may have been formed by taking advantage of the natural inclinations of the soil, and that which may have been specially constructed for the purpose. The defendants are equally liable for any oozing or leaking which may take place" (*Barber* v. *Nottingham and*

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Grantham Rail. Co. (1864), 15 C. B. (N.S.) 726). *Cf. Rhodes* v. *Airedale Drainage Commissioners* (1876), 1 C. P. D. 380. As to the liability attaching to the storage of water in ancient tanks in India, see *Madras Rail. Co.* v. *Carvetinagarum* (*Zemindar*) (1874), 30 L. T. 770).

In an action against a waterworks company (with whose Act was incorporated the Lands Clauses Act) claiming damages for taking so little care of a reservoir that the water oozed out over plaintiff's land causing offensive smells and vapours and rendering his buildings damp and unwholesome and permanently injuring their value, and for obstructing a drain and thereby penning back the sewage of his house so that it could not flow away by means of the drain as it ought; and further, that by reason of making the reservoir and works authorised to be made by the Act, a drain whereby his adjoining house and lands were drained was interrupted and rendered useless, and the company neglected to substitute another drain according to their duty, whereby his house and lands were insufficiently drained; and also for cutting a channel across, and thereby, and also by means of the reservoir and works, depriving him of the use of an agricultural road forming a communication between his lands, and for not substituting another road in lieu of it; and also by the reservoir and works obstructing a public footpath, and depriving him of the use of it and thereby causing him particular damage and inconvenience: it was held that the action was maintainable, the damages claimed not being those directed by Act of Parliament to be settled by arbitration (*Blagrave* v. *Bristol Waterworks Co.* (1856), 1 H. & N. 369).

Security of reservoirs.

See provisions regarding the security of reservoirs, in the Waterworks Clauses Act, 1863 (26 & 27 Vict. c. 93), ss. 3 *et seq.*, *post*, and notes thereon.

Liability at common law for damage caused by water collected in reservoirs, etc.

Apart from statutory powers, the general rule of law is well established that if a person brings on to his own land any matter which, if it escapes, may prove injurious to his neighbour's property, such as a large body of water, he is liable to make compensation for any injury that may accrue from its escape out of his land; and it is no defence, if it escapes and causes damage to his neighbour, that the injury was caused without any default or negligence on his part (*Fletcher* v. *Rylands* (1866), L. R. 1 Ex. 265—Ex. Ch. Affirmed in the House of Lords *sub nom. Rylands* v. *Fletcher* (1868), L. R. 3 H. L. 330). A. was the lessee of mines. B. was the owner of a mill standing on land adjoining that under which the mines were worked. B. desired to construct a reservoir, and employed competent persons, an engineer and a contractor, to construct it. A. had worked his mines up to a spot where there were certain old passages of disused mines; these passages were connected with vertical shafts which communicated with the land above, and which had also been out of use for years, and were apparently filled with marl and the earth of the surrounding land. No care was taken by the engineer or contractor to block up these shafts, and shortly after water had been introduced into the reservoir it broke through some of the shafts, flowed through the old passages, and flooded A.'s mine:—*Held*, that he was entitled to recover damages from B. in respect of this injury (*ibid.*). See *Brocklehurst* v. *Manchester, Bury, etc. Steam Tramways Co.* (1886), 17 Q. B. D. 118, and *National Telephone Co.* v. *Baker*, [1893] 2 Ch. 186, both cited *supra*.

Where mineral workings have caused a subsidence of the surface and consequent flow of rainfall into an adjacent lower coal-field, the injuries, being entirely from gravitation and percolation, are not a valid ground for any claim of damages (*Wilson* v. *Waddell* (1876), 2 App. Cas. 95). A mine-owner will not be liable to the owner of an adjacent mine for injury occasioned to such adjacent mine where such injury proceeds from natural causes, in themselves beyond his control, though his own acts may have conduced to produce the injury, if his acts have only been those of the proper and ordinary working of his own mine without default or negligence. But where, for his own convenience, he does something, *e.g.*, the diverting of a stream, he must take care that the new course provided for it shall be sufficient to prevent mischief from an overflow, so that, even if that overflow

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shall be directly and mainly occasioned by an act of nature, his own conduct in not so forming the new and diverted course for the stream, of form and of sufficient capacity to carry off an accidental overflow of water, even of an exceptional kind, will be matter for consideration in determining the question of his liability (*Fletcher v. Smith* (1877), 2 App. Cas. 781; and see *Attorney-General* v. *Tomline* (1880), 14 Ch. D. 58, and *Hurdman* v. *N. E. Rail. Co.* (1878), 3 C. P. D. 168). By reason of an unprecedented rainfall a quantity of water was accumulated against one of the sides of the defendant's railway embankment, to such an extent as to endanger the embankment, when, in order to protect their embankment, the defendants cut trenches in it by which the water flowed through, and went ultimately on to the land of the plaintiff, which was on the opposite side of the embankment and at a lower level, and flooded and injured it to a greater extent than it would have done had the trenches not been cut. In an action for damages for such injury, the jury found that the cutting of the trenches was reasonably necessary for the protection of the defendants' property and that it was not done negligently :—*Held*, that though the defendants had not brought the water on their land, they had no right to protect their property by transferring the mischief from their own land to that of the plaintiff, and that they were therefore liable (*Whalley* v. *L. & Y. Rail. Co.* (1884), 13 Q. B. D. 131; *cf. Nield* v. *L. & N. W. Rail. Co.* (1874), L. R. 10 Ex. 4, *infra*). The defendants, the owners of a mining property sunk a shaft by which they tapped the water which had formerly found its way into certain old workings on their own ground, and had thence percolated into the plaintiffs' mines. The defendants then made a borehole at the bottom of the shaft. It was admitted that the making of it was not in due course of mining, but only for the purpose of getting rid of the water. The effect of the borehole was to let off the water into the above-mentioned old workings on the defendants' ground, whence it percolated into the plaintiffs' works in the same way in which it would have done if neither shaft nor borehole had ever been made :—*Held* (reversing the decision of FRY, J.), that the defendants had not by making the shaft so appropriated the water as to lay themselves under an obligation to keep it from coming upon the plaintiffs' land, and that, as the effect of the defendants' operations was not to throw upon the plaintiffs' land any burden which it had not borne before, the plaintiffs' case failed (*West Cumberland Iron and Steel Co.* v. *Kenyon* (1879), 11 Ch. D. 782). The respondents were riparian proprietors on one side of a stream, called the Doups Burn. They and their predecessors had for sixty years used the waters of the burn for the purpose of distillation, when the appellants, without any prescriptive rights so to do, poured into the stream a large body of water which they pumped up from their mines, which water, if it were left to the law of gravitation, would never reach the stream. The respondents did not complain of the increased volume of the stream, but that the foreign water was of a character and quality different from that of the natural stream, and that it prejudicially affected the water of the stream for distillery purposes :—*Held*, that the respondents were entitled to have the appellants interdicted from discharging the mine water into the stream (*John Young & Co.* v. *Bankier Distillery Co.*, [1893] A. C. 691). See also *Buccleuch* (*Duke of*) v. *Gilmerton Gas Co.*, [1894] 31 S. L. R. 528. On the bank of a canal, constructed under an old Act of Parliament, a mill had been built. In consequence of the working of a coal mine, the canal and mill had subsided, and water leaked from the canal into the mill. The mill-owner brought an action against the canal company for an injunction, and for damages :—*Held*, that though a company authorised by Act of Parliament were not under the same liabilities as a private person they were liable for damages if they were guilty of negligence, and that the canal company had been guilty of negligence, inasmuch as they might have prevented the damage, and that they were bound to compensate the mill-owner. But that, under the special provisions of their Act, compensation must be recovered as directed by the Act, and not by action :—*Held*, that such being the case, an injunction would not be granted, and that, apart from this, inasmuch as the time and extent of any further subsidence could not be foreseen, there ought not to be an injunction :—*Held*, that the damage having been caused by the wrongdoing of the mine-owner did not affect the case (*Evans* v. *M. S. & L. Rail. Co.* (1887), 36 Ch. D. 626).

In *Box* v. *Jubb* (1879), 4 Ex. D. 76, it appeared that the defendants possessed a reservoir, with sluices connected with a main drain or watercourse, from which the reservoir was supplied, and with sluices by which the surplus water was returned into the drain at a lower level. The combined effect of the emptying of a reservoir belonging to a third person above the defendants' premises and of an obstruction in the drain below them was to force water through the sluices into the defendants' reservoir, and so cause an overflow thence on to the plaintiffs' land. In an action for damage caused thereby it was shown that the defendants had no control over the main drain or the other reservoir, or knowledge of the circumstances which caused the overflow, and that the sluices were maintained so as to prevent overflow under ordinary circumstances:—*Held*, that the defendants were not liable.

A company was by statute authorised to make a canal and required to maintain it in good order for navigation by the public. Preparatory to making some necessary repairs and improvements, they turned off the water into a drain (designed for that purpose), from whence it ought to flow, as on a previous occasion it actually did, into a public sewer, which was under the exclusive care and control of the Corporation of Dublin; but owing to an unforeseen obstruction in the sewer the water was stopped and flooded the plaintiff's premises; and although the company became aware of the flooding—though not of the immediately efficient cause—it did not appear that they had taken or could have taken any steps to prevent or stop the discharge of water from the canal into the drain:—*Held*, that the company, while acting in exercise of their statutory powers, could not in the absence of negligence on their part be made responsible for the injury done (*Boughton* v. *Midland Great Western Railway of Ireland Co.* (1872), 7 Ir. C. L. R. 169). The jury having found that the flooding of the plaintiff's premises was caused by the obstruction in the corporation sewer, it was further held that there was no evidence of negligence by the company which ought to have been submitted to the jury (*ibid.*).

Vis major.

One who stores water on his own land, and uses all reasonable care to keep it safely there, is not liable for damage effected by the escape of the water, if the escape be caused by the act of God, or *vis major, e.g.*, by an extraordinary rainfall which could not reasonably have been anticipated, although if it had been anticipated the effect might have been prevented. On the defendant's land were ornamental pools containing large quantities of water. These pools had been formed by damming-up with artificial banks a natural stream which rose above the defendant's land, and flowed through it, and which was allowed to escape from the pools successively by weirs into its original course. An extraordinary rainfall caused the stream and the water in the pools to swell so that the artificial banks were carried away by the pressure, and the water in the pools being thus suddenly loosed, rushed down the course of the stream and injured the plaintiff's adjoining property. The plaintiff having brought an action against the defendant for damages, the jury found that there was no negligence in the construction or maintenance of the pools, and that the flood was so great that it could not reasonably have been anticipated, though, if it had been anticipated, the effect might have been prevented:—*Held* by the Court of Appeal (distinguishing the case of *Fletcher* v. *Rylands*, *supra*), that this was in substance a finding that the escape of the water was caused by the act of God, or *vis major*, and that the defendant was not liable for the damage (*Nichols* v. *Marsland* (1876), 2 Ex. D. 1). See also *Nitro-Phosphate and Odam's Chemical Manure Co.* v. *London and St. Katherine Dock Co.* (1878), 9 Ch. D. 503, which was an action to recover damages caused to the plaintiff's premises and stock-in-trade by an overflow of water from the Victoria Dock on November 15th, 1875. The statute which empowered the defendants to construct the dock required them to maintain the bank surrounding it at a height of four feet above Trinity high-water mark. The bank was in in fact for some distance six to eight inches lower than this. The tide rose on November 15th, 1875, four feet three

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inches above Trinity high-water mark. It had never been known to rise so high before; but it had, in March, 1874, risen to four feet. Between March, 1874, and November, 1875, there had never been a tide so high as four feet. Mr. Justice FRY, in deciding for the plaintiff, and granting an injunction to restrain the defendants from allowing their bank to remain at a height of less than four feet above Trinity high-water mark, observed that, under the circumstances, he should have had great difficulty in holding that the defendants would have been liable at common law for negligence, but relied on the statutory liability of the defendants to maintain the bank of a height of four feet. See *Fletcher* v. *Smith*, *supra*, and *Madras Rail. Co.* v. *Carvetinagarum* (*Zemindar*) (1874), 30 L. T. 770, which is a decision relating to water stored in ancient tanks in India.

In *Carstairs* v. *Taylor* (1871), L. R. 6 Ex. 217, the plaintiff hired of the defendant the ground floor of a warehouse, the upper part of which was occupied by the defendant himself. The water from the roof was collected by gutters into a box, from which it was discharged by a pipe into the drains. A hole was made in the box by a rat, through which the water entered the warehouse and wetted the plaintiff's goods. The defendant had used reasonable care in examining and seeing to the security of the gutters and the box. In an action by the plaintiff against the defendant for the damage so caused:—*Held*, that the defendant was not liable, either on the ground of an implied contract, or on the ground that he had brought the water to the place from which it entered the warehouse.

In *Ross* v. *Fedden* (1872), L. R. 7 Q. B. 661, the plaintiff occupied for business purposes the ground floor, and the defendants the second floor, of the same house, respectively, as tenants from year to year. There was a watercloset on the defendants' premises, to and of which they alone had access and use. After their respective premises had been closed on a Saturday evening, water percolated from the watercloset through the first floor to the plaintiff's premises, and caused damage to his stock-in-trade. The overflow of the water was owing to the valve of the supply-pipe to the pan having got out of order and failed to close, and the waste-pipe being choked with paper. The defects could not be detected without examination, and the defendants did not know of them, and were guilty of no negligence:— *Held*, that there was no obligation on the defendants to keep in the water at their peril, and that they were not liable to the plaintiff for the damage. See also *Blake* v. *Land and House Property Corporation* (1887), 3 T. L. R. 667.

The ground floor of a house was demised to the plaintiff by the defendant under a lease containing a covenant that the lessee might "peaceably hold and enjoy the said demised premises during the said term without any interruption by the lessor or any person lawfully claiming through or in trust for him." The remainder of the house was let out in floors to different tenants. Before and during the demise to the plaintiff the water supply was effected by means of a main service pipe connected with a cistern placed at the top of the house, branch pipes being inserted into the main pipe for the supply of water to each floor. The tenants paid a proportion of the water rate for the supply to their respective premises. The branch pipe on the first floor suddenly burst, and the water therefrom poured down into the plaintiff's premises and injured his goods. In an action for damages the jury found that the branch pipe when fixed (which was before the demise) was a reasonably fit and proper one for the purpose for which it was fixed and intended, and that there was no negligence or want of skill in the fixing and maintaining the pipe where and as it was. It was held, that the plaintiff had no cause of action founded upon the covenant for quiet enjoyment, because the covenant was prospective, and there had been no act of omission or commission during the demise to the plaintiff causing an interruption to his enjoyment. And it was also held, that the apparatus for the water supply being for the common benefit of the plaintiff and the other tenants the plaintiff had no cause of action founded upon the principle laid down in *Fletcher* v. *Rylands* (*Anderson* v. *Oppenheimer* (1880), 5 Q. B. D. 602).

Where the rain water from the plaintiff's and defendant's adjoining roofs drained on to the roof of the defendant's area and so down a pipe into the defendant's drain, this arrangement being with the assent and for the benefit of both parties, it was held that the defendant was not liable in the absence of negligence on his part, for damage arising to the plaintiff's premises from an accumulation of water on the area roof owing to an obstruction in the pipe (*Gill* v. *Edouin* (1895), 72 L. T. 579). As to whether fall pipes and drains, which receive rain water from more than one house, thereby become sewers, reference may be made to *Silles* v. *Fulham Borough Council*, [1903] 1 K. B. 829, and the observations of Channell, J., on this case in *Heaver* v. *Fulham Borough Council*, [1904] 2 K. B. 383.

The defendant was the owner of premises to which water was laid on, and he had a cistern on the fourth floor. The plaintiff became tenant of the ground-floor, and took his supply of water from the defendant. A leakage from the cistern having been noticed by the plaintiff, he informed the defendant, who instructed a competent plumber to remedy it. In consequence of the negligence of the plumber, an overflow occurred, which damaged the plaintiff's goods :—*Held*, that the defendant was not liable, since the plaintiff had assented to the water being on the premises, and therefore, the defendant, by instructing a competent plumber to remedy the leakage, had discharged his duty to the plaintiff (*Blake* v. *Woolf*, [1898] 2 Q. B. 426).

Under the powers of the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), the Metropolitan Board of Works constructed, and properly constructed, a sewer, having its outfall at Deptford Creek, a little above the plaintiff's coal wharf, with watergates, which it was the duty of the person in charge of them to open when the water within them became eight feet deep, a depth which was reached only in heavy rainfalls. On August 29th, 1879, there was an exceptionally heavy rainfall, and it became necessary to open the watergates to prevent a large district from being flooded. This having been done, and the rain increasing in violence, the rush of water from the sewer carried away a portion of the plaintiff's wharf with a barge moored thereto, and a quantity of coals deposited therein and thereon. It was held, that the injury complained of was occasioned by the opening of the watergates and not by the act of God, and therefore the defendants were *primâ facie* liable for the damage done within the principle of *Fletcher* v. *Rylands*, but that as they were a public body acting in the discharge of a public duty, and as that which happened was only the inevitable result of what Parliament had authorised them to do, they were not liable (*Dixon* v. *Metropolitan B. of W.* (1881), 7 Q. B. D. 418).

Where the defendant allowed water to collect in his cellar, and to percolate into the plaintiff's cellar, it was held that this was a wrong within the decision in *Fletcher* v. *Rylands*, and that the plaintiff was entitled to damages (*Snow* v. *Whitehead* (1884), 27 Ch. D. 588). In 1855, a municipal corporation made a sewer under a road within their district. Many years afterwards the owners of premises abutting on the road erected a brewery, and, in pursuance of s. 21 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), or the corresponding section of the Sanitary Act, 1866 (29 & 30 Vict. c. 90), connected the drainage of the brewery cellars with the sewers. In 1891, 1892, and 1893, the cellars were damaged by floodings. The floodings arose from the fact that by reason of the large increase in recent years in the number of buildings draining into the sewer, when very heavy falls of rain occurred the sewer was too small to carry off the influx of water, and the pressure forced the contents of the sewer through the connections into the cellars. The system of drainage originally adopted reasonably provided for the district, and for the then probable increase of buildings which would have to drain into it. There had been no negligence in constructing or maintaining the sewer, or in not providing a new sewer or sewage system :—*Held*, (1) that the corporation were not liable as strangers and apart from any statutory duty; (2) that, in the absence of negligence, the corporation were not liable under s. 19 of the Public Health Act, 1875 (*Stretton's Derby Brewery Co.* v. *Mayor of Derby*, [1894] 1 Ch. 431).

Owing to an escape of sewage from a sewer vested in an urban district council, the supply of drinking water used by an adjacent hydropathic

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establishment became polluted, and an outbreak of typhoid fever occurred in the establishment. In an action by the proprietor against the council for damages for the pollution of the water supply, it appeared that the plaintiff had been taking water which belonged to the defendant council without any right or permission to do so, and without the council's knowledge; and further that the pollution took place on the council's land where the water was collected. The jury found that the pollution was due to negligence on the part of the defendant council, and that there was no contributory negligence on the part of the plaintiff, and awarded damages to the plaintiff. It was held that the plaintiff had not established any breach of a duty on the part of the defendants, and that his action failed (*Fergusson* v. *Malvern U. D. C.* (1909), 73 J. P. 361).

Wrongful diversion of water into reservoir.

The defendants, a corporation, were empowered, by a local Act of Parliament, to construct a reservoir for public purposes, and to divert to it the waters of certain rivers and streams, and were required (under penalties) to discharge from the reservoir a certain specified quantity of water per second for the use of the mills on the river E. The Act provided that the defendants should not divert any of the waters of the river E. until the reservoir should be completed and filled, and water discharged therefrom in the quantity provided, and that, except as provided for, the rights of mill-owners should not be prejudiced. The defendants diverted a part of the waters of the river E., but, from engineering difficulties, the reservoir was not completed so as to be capable of being filled with water:—*Held*, that the mill-owners on the river E. could not maintain an action for the non-supply of the statutable amount of water from the reservoir, but were confined to an action for damages occasioned by the wrongful diversion of the natural supply before the completion of the reservoir (*Waller* v. *Mayor of Manchester* (1861), 6 H. & N. 667).

Wrongful taking of water by company.

The Bristol Waterworks Act, 1846 (9 & 10 Vict. c. ccii.), enabled the company to take the water of the river Chew, subject to certain conditions and on paying compensation for it. In 1849 their works were completed, and they used the water of the river. In 1853 a subsequent Act provided, that "nothing in that Act, or in the Bristol Waterworks Act, 1846, shall extend to authorise the company to purchase, take, use or interfere with any land, soil, or water, or any rights in respect thereof belonging to the Duke of Cornwall, without the consent" of the duke under his privy seal. After the passing of that Act, the company continued to take the water of the river as they had done before, since the completion of their works, and thereby diverted a stream which ought to have irrigated certain land belonging to the duke. It was held that the proviso in the Act of 1853 had a retrospective operation, and prevented the company from taking as before the water of the duke without his consent (*Attorney-General* (*P.W.*) v. *Bristol Waterworks Co.* (1855), 10 Ex. 884).

Banks of channel giving way.

A company undertaking for their own profit to maintain a channel for carrying off water, and neglecting to do so effectually, are responsible for damage done to the adjoining land by reason of the banks giving way after an unusual rainfall, although other persons, who were bound to keep the outlet of the channel of certain dimensions, had failed to perform that duty, and had thereby occasioned an increase of water in the channel without which its banks would not have given way (*Harrison* v. *G. N. Rail. Co.* (1864), 3 H. & C. 231). Lord Chief Baron POLLOCK, in giving judgment, said: "The sufficiency of a cut depends upon its depth, width, fall, and outlet, as compared with the water likely to be in it. Now in this case the cut was not sufficient to hold the water likely to be in it, owing to the condition of its outlet. If no one was under any obligation in relation to that outlet, it is clear that the cut was insufficient and that the defendants would be responsible. Are they less so, because there is an obligation on others as to the outlet which is not performed? We think not."

The following cases were decided upon special Acts relating to the maintenance of the banks of a river:—*Vyner* v. *N. E. Rail. Co.* (1898), 14 T. L. R. 554; *Vyner* v. *N. E. Rail. Co.* (1904), 20 T. L. R. 192.

By an award, made by commissioners under an inclosure Act, drains were set out, and it was directed that the owners or occupiers of the land over which such drains passed should make and cleanse and keep the same of sufficient width and depth to carry off the water intended to run down the same:—*Held*, that this did not authorise the plaintiff to make a sough or under-drain on his land, so as to cause an increased quantity of water to pass into one of the awarded drains (*Sharpe* v. *Hancock* (1844), 7 M. & G. 354).

As to the principles governing the measure of damages for injury caused by flooding to a building estate partly built over, see *Rust* v. *Victoria Graving Dock Co.* (1887), 36 Ch. D. 113.

Damage to canal by flood water of river.

In *Nield* v. *L. & N. W. Rail. Co.* (1874), L. R. 10 Ex. 4, the defendants, owners of a canal, being threatened by an overflow of flood water from a neighbouring river, and fearing damage to their premises situated on the banks of the canal, placed across it, at a point above their premises, planks reaching from the bottom of the canal to the coping stone, which was some inches higher than the surface of the canal water. The flood water afterwards broke into the canal at a point above the barricade of planks, and opposite to the plaintiff's premises, which were also situated on the banks of the canal above the premises of the defendants, and, being penned back by the planks, the water rose in the canal until it flooded the plaintiff's premises. In an action brought to recover damages for the injury so caused:—*Held*, that the defendants were not liable, on the ground that the water which did the mischief was not brought there by them, and that there is no duty on the owners of a canal analogous to that on the owners of a natural watercourse not to impede the flow of water down it (*cf. Whalley* v. *L. & Y Rail. Co.* (1884), 13 Q. B. D. 131, *ante*, p. 394).

By parol licence from L. and from the defendant, the plaintiffs constructed and used a watercourse for the purpose of discharging the water from their own mines across the land of L., and thence across the land of defendant. The defendant having revoked his licence, and the plaintiffs having refused to discontinue using the watercourse, the defendant entered upon the land of L. at a spot near the boundary between it and the land of the plaintiffs, and obstructed the watercourse. The defendant, by stopping the watercourse on his own land would have done less damage to the plaintiffs than was actually done, but more damage to L. and possibly some damage to the public:—*Held*, (affirming the judgment of the court below), that the watercourse was obstructed in a reasonable manner, inasmuch as the convenience of the plaintiffs, who, after revocation of the licence, were wrongdoers, was subordinate to the convenience of innocent third persons and of the public (*Roberts* v. *Rose* (1865), L. R. 1 Ex. 82). By a special case it was found, that on the occasion of an extraordinary rainfall, the defendants opened a sluice and discharged from their canal into a brook more water than the latter was able to carry off, and in consequence the brook overflowed into the plaintiff's mines. It was found, further, that if the sluice had not been so opened the canal bank would have burst; that the adjacent country and the plaintiff's mines would have been inundated; and that the course of the defendants was the prudent and only effectual one in the emergency; that the plaintiff's mines were only flooded a few hours sooner than they otherwise would have been and no additional damage was caused to the plaintiff thereby:—*Held*, that upon these findings, even assuming the defendant's act to have been a wrongful one, it was *injuria sine damno*, and, therefore, not a ground of action. *Held*, secondly, that the compensation clauses of the Acts of Parliament did not apply to such a case (*Thomas* v. *Birmingham Canal Co.* (1880), 49 L. J. Q. B. 851).

Prior to 1866 a stream was conveyed by a canal company under and across its canal through two wooden tunnels, for which in 1866 the company substituted metal tunnels of less capacity; in consequence of which, after heavy rains, the stream in 1873 flooded the plaintiff's lands adjacent to the canal:—*Held*, that the substitution of the smaller for the larger tunnels was in its inception an innocent act without either *injuria* or *damnum*, and only became tortious upon the subsequent flooding, and that the Statute of Limitations

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began to run from the time of the flooding in 1873 (*Devery* v. *Grand Canal Co.* (1875), 9 Ir. C. L. R. 194). See also as to the running of the Statute of Limitations, *West Leigh Colliery Co.* v. *Tunnicliffe and Hampson, Ltd.*, [1908] A. C. 27.

Riparian rights in flowing waters.

The right to the enjoyment of a natural stream of water on the surface belongs *naturali jure* to the proprietor of the adjoining land as a natural incident to the right to the soil itself. He has the right to have it come to him in its natural state, in flow, quantity and quality, and to go from him without obstruction, upon the same principle that he is entitled to the support of his neighbour's soil for his own in its natural state. And such a right depends in no way upon prescription or the presumed grant of his neighbour, nor from the presumed acquiescence of the proprietors above and below (*Chasemore* v. *Richards* (1859), 7 H. L. Cas. 349).

Flowing water is *publici juris* in this sense only, that all may reasonably use it who have a right of access to it, and that none can have any property in the water itself, except in the particular portion which he may choose to abstract from the stream and take into his possession, and that during the time of his possession only (*Embrey* v. *Owen* (1851), 6 Ex. 353). The right to have a stream of water flow in its natural state, without diminution or alteration, is an incident to the property in the land through which it passes; but this is not an absolute and exclusive right to the flow of all the water, but only subject to the right of the other riparian proprietors to the reasonable enjoyment of it; and consequently it is only for an unreasonable and unauthorised use of this common benefit that any action will lie (*ibid.*).

The right of using flowing water does not necessarily depend upon the ownership of the soil covered by such water (*Lord* v. *Sydney Commissioners* (1859), 12 Moo. P. C. C. 473).

A riparian proprietor, notwithstanding that a river is navigable, can acquire an interest in its water-power as derived from a reservoir artificially formed by a dam across its channel, and sell the same along with and as appurtenant to his land. Even if such sale should not be effectual against the public, the vendor cannot himself impeach it on that ground:—*Held*, in this case, that as the vendor of a specified amount of water-power had not reserved to himself a right to a supply either *pari passu* with or preferably to the purchaser, the latter was entitled to damages in respect of any loss incurred by the vendor's user of the water in diminution of the amount sold (*Hamelin* v. *Bannerman*, [1895] A. C. 237).

The corporation of Godmanchester, as owners of certain lands, had for more than 200 years opened, as of right, the gates of certain sluices or locks belonging to the appellant upon the river Ouse, in time of flood or likelihood of flood, in order to prevent damage to those lands:—*Held*, that the easement was good, and was none the worse because the exercise of it also benefited lands belonging to other persons; and that the corporation could maintain their right either by s. 2 of the Prescription Act, 1832 (2 & 3 Will. 4, c. 71), or by the fiction of a lost grant (*Simpson* v. *Godmanchester Corporation*, [1897] A. C. 696).

Under letters patent in the seventeenth century the owner of land adjoining the river Ouse between St. Neots and St. Ives, which was there a public river navigable only in sections, made in his own land cuts from the river and locks in the cuts, and took tolls from the vessels passing through the locks. In 1720, by 6 Geo. 1, c. 29, the then landowner was empowered to rebuild a stanch in the river below St. Ives, and to repair and maintain it, and to take tolls on vessels passing through it. Tolls were collected at the locks for more than 200 years and at the stanch for a long period by the predecessors in the title of the appellant:—*Held*, by Lords MACNAGHTEN, JAMES and ROBERTSON (Lords DAVEY and LINDLEY dissenting upon the question of a highway through the locks) that there was no evidence that the locks had ever been dedicated to the public as a highway, and that the appellant was not bound to maintain or repair or allow the public to pass through the locks or the stanch (*Simpson* v. *Attorney-General*, [1904] A. C. 476).

"All streams are *publici juris*, and all the water flowing down any stream is for the common use of mankind who live on the banks of the stream, and, therefore, any person living on the banks of the stream has an undoubted right to the use of the water for himself, his family, and his cattle, and for all ordinary domestic purposes, such as brewing, washing, and so on": *per* JAMES, L.J., in *Wilts and Berks Canal Navigation Co.* v. *Swindon Waterworks Co.* (1874), L. R. 9 Ch., at p. 457. See same case in House of Lords, L. R. 7 H. L. 697.

As to the rights of railway companies who are riparian owners, see *Attorney-General* v. *G. E. Rail. Co.; Earl of Sandwich* v. *G. N. Rail. Co.;* and *McCartney* v. *Londonderry, etc., Rail. Co.*, cited at p. 408, *post.*

As to surface water which does not flow in any defined channel, and which squanders itself over the surface, see *Broadbent* v. *Rambotham*, *post*, p. 418.

In a case where the plaintiffs, in common with other inhabitants of a particular district, enjoyed a customary right at all times to have water from a certain spout in a highway in the district for domestic purposes, the defendant, a riparian owner of the stream whereby the spout was supplied with water on various occasions prevented such large quantities of water from reaching the spout as to render what remained insufficient for the needs of the inhabitants. The plaintiffs had not themselves ever suffered any actual personal damage or inconvenience:—*Held*, that an action for diverting the water was maintainable without proof of any actual personal damage, inasmuch as the act of the defendant might, if repeated often enough without interruption, furnish evidence in derogation of the plaintiffs' legal rights (*Harrop* v. *Hirst* (1868), L. R. 4 Ex. 43).

In the year 1860, the owner of properties A. and B. made a drain from a tank on property B. to a lower tank on the same property, and laid pipes from the lower tank to cattle sheds on property A., for the purpose of supplying them with water, and they were so supplied till 1863, when the owner sold property A. to the plaintiff, with all waters, watercourses, etc., to the same hereditaments and premises belonging or appertaining, or with the same or any part thereof held, used, enjoyed, or reputed as part thereof, or as appurtenant thereto. The plaintiff had the use of the water after his conveyance until the defendant, a subsequent purchaser of property B., stopped it:—*Held*, that the watercourse was a continuous easement necessary for the use of property A., and would have passed by implication; that the plaintiff was entitled to the use of the water on the conveyance of the property, without any words of grant; and that, supposing it only convenient and not necessary, the general words were sufficient to pass it. *Held*, further, that the right was to have the accustomed flow of water through the pipes, without regard to the purpose for which the plaintiff used it; and that right, therefore, was not lost by his erecting cottages instead of cattle sheds (*Watts* v. *Kelson* (1870), L. R. 6 Ch. 166; and see *Roe* v. *Siddons* (1888), 22 Q. B. D. 224).

A dwelling house was demised for the residue of a term, together with "all waters, watercourses, . . . easements and appurtenances." The house had, for 18 years, obtained a supply of water from a reservoir held by the lessors as yearly tenants. Five years afterwards a water undertaking was sanctioned by Parliament in the hands of the defendants, and the successor in title of the lessors transferred to the undertakers his interest in the reservoir:—*Held*, that the owners of the house were entitled to the water supply as long as the defendants remained yearly tenants of the reservoir (*Key* v. *Neath R. D. C.* (1905, 1906), 69 J. P. 356; 71 J. P. 57). *Cf. Burrows* v. *Lang*, [1901] 2 Ch. 509; *Birmingham, Dudley and District Banking Co.* v. *Ross* (1888), 38 Ch. D. 295; and *Whitmores (Edenbridge), Ltd.* v. *Stanford*, [1909] 1 Ch. 427.

A purchaser of a piece of land, with a well or spring upon it, covenanted with the vendor—who retained land adjoining intended to be disposed of for building sites—to erect a pump and reservoir, and to supply water from the well to all houses built on the vendor's land:—*Held*, (1) that both the benefit

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and the burden of the covenant ran with the land, and that the case was not within the second resolution in *Spencer's Case* (1583), 5 Rep. 16 a; but if not, a sub-purchaser, with notice of the covenant, was bound by it. *Held*, (2) that though the covenant was not one of which the court would decree specific performance directly, as being for the construction of works which the court could not superintend, it could be enforced indirectly by an injunction restraining the defendant from allowing the work to remain unperformed (*Cooke* v. *Chilcott* (1876), 3 Ch. D. 694).

A water company who were authorised in 1869 to make "an impounding reservoir or basin with a dam or weir across the Nantyffrith Brook," and to collect into that reservoir "the waters of the brook or stream called Nantyffrith, and of all brooks and streams flowing into the same above the dam or weir" aforesaid, and so became owners of the reservoir, through the site of which the stream originally flowed, have the right to stop any person from diverting the water which at that time came down, or but for a stoppage would come down, as part of that stream or its tributaries above the dam, and as to which the person diverting could have been restrained from continuing his diversion at the suit of a lower riparian owner, but not to stop any person using water above who had a right to do so at the time their Act was passed. A person who makes an artificial cutting, and so brings water to a stream which did not go there before, can *primâ facie* cut it off if he chooses. The fact that an embankment is occasionally out of repair during a term of years or too low when the water is high (*e.g.*, in flood), and so allows water to overflow into other land, gives the owner of that other land no prescriptive right to the overflow (*Brymbo Water Co.* v. *Lesters Lime Co.* (1894), 8 R. 329). *Cf. Biscoe* v. *Drought* (1860), 11 Ir. C. L. R. 250.

A landowner granted to a company all the watercourses, dams, and reservoirs upon certain lands of his, which watercourses, dams, and reservoirs were laid down upon the annexed plan which was to be taken as part of the deed, and were thereon coloured blue, and also the several streams and springs of water flowing into or feeding the said watercourses, dams, and reservoirs, with right for the company solely to take and use the water from the said springs or streams of water, watercourses, dams, and reservoirs, with powers to cleanse and repair, and with all such other powers as should be requisite for enabling the company to enjoy the premises thereby granted. The grantor was to be at liberty to use the waste or overflow water from the dams or reservoirs of the company, but was not to exercise this power if the company resolved that its exercise would be injurious to them. The property coloured blue on the plan consisted of an *artificial* watercourse, partly covered and partly open, the dimensions of various parts of which were specified on the plan, and in some cases it was noted on the plan that they might be enlarged to a certain extent. Several springs and streams feeding the watercourse were marked on the plan. The watercourse, it appeared, was large enough to carry on all the water which flowed into it, except after heavy rain, but at one point of its course underground there was a contraction of the channel which after heavy rain backed up the water, and caused a considerable overflow over a weir, of which overflow the grantor for many years had the benefit. The grantees, having occasion for more water, proceeded to remove the above obstruction, so as to allow the whole of the water which came into the watercourse during heavy rains to run down into their reservoir:—*Held* (affirming the decision of the Vice-Chancellor of the Lancaster Court), that the grant was a grant of the artificial channel, of the definite springs and streams on the land, and of such other water as should find its way into and run down the channel as it stood, and not a grant of all the water on the land, and that the grantees had no right to alter the levels of or enlarge the channel so as to enable it to carry off all the water that ran into it in times of heavy rain (*Taylor* v. *St. Helen's Corporation* (1877), 6 Ch. D. 264).

Where a Canal Act gave to the proprietors of the navigation a power of making a canal, and of using the waters of a river for supplying it, but provided, at the same time, for securing to the owners of certain works the use of the surplus waters of that river, the making of the canal ascertained and fixed the rights of the parties, and the canal proprietors had no right afterwards to enlarge the canal and draw a much larger quantity of water from the river, so as injuriously to affect the works in question. A clause in a second Act of Parliament relating to the same canal, declared that the works thereby authorised should be completed within two years from the time of its passing, and that the money to be raised by it should not be applied to defray the expenses of any of the works not made within that time:—*Held*, that this clause not only limited the application of the money to works completed within that time, but that no works should be carried on adversely to the interests of individuals after the expiration of two years (*Glamorgan Canal Navigation Co.* v. *Blakemore* (1832), 1 Cl. & F. 262).

In a lease of certain premises with appurtenances, the lessor reserved out of the demise "the free running of water and soil coming from any other buildings and lands contiguous to the premises hereby demised in and through the sewers and watercourses made or to be made within, through, or under the said premises":—*Held*, first, that the reservation extended to water and soil coming from contiguous lands and buildings, whether that water and soil in the first instance actually arose on or from such contiguous lands or buildings or not; and secondly, that it did not extend beyond water in its natural condition, and such matters as are the product of the ordinary use of land for habitation, and that therefore it did not give to the occupier of certain tan-pits, who claimed under the lessor, a right of passage for the refuse of those pits (*Chadwick* v. *Marsden* (1867), L. R. 2 Ex. 285). The right to the water of a river flowing in a natural channel through a man's land and the right to water flowing to it through an artificial watercourse constructed on his neighbour's land, do not rest on the same principle. In the former case each successive riparian proprietor is *primâ facie* entitled to the unimpeded flow of water in its natural course, and to its reasonable enjoyment as it passes through his land, as a natural incident to his ownership of it. In the latter any right to the flow of the water must rest on some grant or arrangement, either proved or presumed, from or with the owners of the lands from which the water is artificially brought or on some other legal origin (*Rameshur Pershad Narain Sing* v. *Koonj Behari Pattak* (1878), 4 App. Cas. 121). See hereon a judgment of BIGHAM, J., in *Barratt* v. *Lovell*, *Times*, February 23rd, 1903.

Artificial watercourses and channels.

A watercourse, though artificial, may have been originally made under such circumstances and have been so used as to give all the rights that the riparian proprietors would have had if it had been a natural stream; and therefore, in an action by one riparian proprietor against another for the pollution and diversion of a watercourse, it was held a misdirection to tell the jury that, if the stream were artificial and made by the hand of man, the plaintiff could have no cause of action (*Sutcliffe* v. *Booth* (1863), 32 L. J. Q. B. 136). See this case considered and approved in *Roberts* v. *Richards* (1881), 50 L. J. Ch. 297. See *Ennor* v. *Barwell* (1860), 1 De G. F. & J. 529; *Blackburne* v. *Somers* (1879), 5 L. R. Ir. 1; *Hanna* v. *Pollock*, [1900] 2 Ir. R. 664; *McEvoy* v. *Great Northern Rail. Co.*, [1900] 2 Ir. R. 325, 340. In the case of an artificial watercourse, the origin of which is unknown, the proper inference from the user of the water and from other circumstances may be that the channel was originally constructed upon the condition that all the riparian proprietors should have the same rights (including a right to use the water for manufacturing purposes) as they would have had if the stream had been a natural one (*Baily & Co.* v. *Clark, Son & Morland*, [1902] 1 Ch. 649. As to the rights of the owners of lands on either side of an ancient but artificial watercourse, see *Burrows* v. *Lang*, [1901] 2 Ch. 502; and *Whitmores* (*Edenbridge*), *Ltd.*, v. *Stanford*, [1909] 1 Ch. 427; and see further as to artificial watercourses *Arkwright* v. *Gell* (1839), 5 M. & W. 231, and cases cited on pp. 413 *et seq.*, *post*. The plaintiff and defendant occupied contiguous portions of land. For more than forty years and as far back as living memory went the occupiers of plaintiff's land had been in the habit of passing over defendant's land to a brook which lay on the other side of that land, and of damming up the brook when necessary so as to force the water into an old artificial watercourse which ran across defendant's land to

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plaintiff's land. They did this for the purpose of supplying their cattle with water whenever they wanted the water, except when the owners of defendant's land used the water, as they did at certain seasons of the year, for irrigation. It was held, that upon this evidence the jury were warranted in inferring an user as of right, by the occupiers of plaintiff's land, of the easement on defendant's land; and that for the interruption of such easement the plaintiff might maintain an action against the defendant (*Beeston* v. *Weate* (1856), 5 E. & B. 986). See also *Roberts* v. *Fellowes* (1906), 94 L. T. 279; *Heggie* v. *Nairn* (1882), 9 Ct. of Sess. Cas., 4th ser., 704.

The defendant being the owner of a canal, of which the plaintiffs were large customers, a mutual understanding was come to between the parties, that so long as the plaintiffs remained good customers of the canal, they should be allowed to use the superfluous water of the canal for the purposes of copperworks, of which they were occupiers under an agreement for lease with the defendant. It was shown that the use of the water of the canal, though convenient and economical, was not absolutely essential to the plaintiffs' works:—*Held*, that such an understanding did not form the foundation of an equitable right. *Secus*, if the plaintiffs with the knowledge of the defendants had incurred expense in establishing a manufacture for which the use of the water was absolutely necessary (*Bankart* v. *Tennant* (1870), L. R. 10 Eq. 141). *Cf. Rochdale Canal Co.* v. *King* (1849), 14 Q. B. 122; *Rochdale Canal Co.* v. *Radcliffe* (1852), 18 Q. B. 287; *Rochdale Canal Co.* v. *King* (1851) 2 Sim. (N.S.) 78.

When a prescriptive right to discharge surface water across adjacent property by a specific channel has been acquired, the obstruction of the channel on the servient tenement by the tenant of the latter is an invasion of a legal right for which an action is maintainable without proof of actual perceptible damage (*Claxton* v. *Claxton* (1873), 7 Ir. R. C. L. 23).

Water, as it issues from a well or a spring, is not to be considered as produce of the soil, so as to make the right to take it *in alieno solo* for domestic purposes a *profit à prendre*. Such right is an easement only, and may be claimed by custom (*Race* v. *Ward* (1855), 4 E. & B. 702).

It was held in *Greatrex* v. *Hayward* (1853), 8 Ex. 291, that the flow of water from a drain, for the purpose of agricultural improvements, for twenty years, could not give a right to a neighbour, so as to preclude the proprietor from altering the level of his drain for the improvement of his land.

An owner of land has an unqualified right to drain it for agricultural purposes in order to get rid of mere surface water, the supply of the water being casual and its flow following no regular or definite course; and a neighbouring proprietor cannot complain that he is thereby deprived of such water which otherwise would have come to his land. Therefore, where the defendant's land was a wet, springy spot, at which, at most seasons of the year, some water rose to the surface and flowed down the slope of the land: in wet seasons a great body of water flowed down, and after a long drought there was scarcely any, and sometimes none. There was no regularly-formed ditch or channel for the water, the place where it flowed being constantly trodden in by cattle. The water which was not absorbed (and all was not absorbed except in times of drought) ran into an old watercourse of the plaintiff. The water had so flowed for more than twenty years. The defendant, for the purpose of supplying some of his property with water and draining his land, diverted the water in question from the plaintiff's reservoir. At a certain other spot on the defendant's land there had always been, as far back as anyone could recollect, water rising to the surface; there had generally been a regular drinking place for cattle, formed with stones, and the overflow of the water went down a ditch and thence into a watercourse to the plaintiff's reservoir. The defendant carried a drain under the spot in question, and conveyed away the water to another portion of his property, so that the water ceased to rise to the surface and flow into the plaintiff's reservoir:—*Held*, that in neither case was the plaintiff entitled to the benefit of the flow of the water, and that the defendant was not liable for the diversion (*Rawstron* v. *Taylor* (1855), 11 Ex. 369).

A man who places an artificial mound upon his property, and thereby causes rain water percolating naturally to come on to the property of his neighbour, is liable to the latter in respect of damage so caused (*Hurdman* v. *N. E. Rail. Co.* (1878), 3 C. P. D. 168; see *Whalley* v. *L. & Y. Rail. Co.* (1884), 13 Q. B. D. 131).

Power given to a canal company by their Act of incorporation to supply the canal with water from all brooks, streams, and watercourses within 1,000 yards of the canal, does not so far comprise rain and other surface water which, being collected on the road, runs along an open gutter into the canal, as to preclude a local authority from allowing it to fall through gratings into a sewer made under the road for the drainage of the district (*M. S. & L. Rail. Co.* v. *Worksop L. B.* (1856), 23 Beav. 198).

As to the construction of a grant of the artificial channel of certain defined springs and streams, see *Taylor* v. *St. Helen's Corporation* (1877), 6 Ch. D. 264).

Riparian and other neighbouring proprietors.

"When the boundary of two properties passes along or over a stream or piece of water, it is taken *primâ facie* to coincide with the *medium filum* of the stream, or the diameter of the pool; although, of course, it may be proved expressly to have some other direction. If a river be divided into two courses by an island in its middle, the *medium filum* for boundary purposes is that which bisects the island; but if the island be nearer one side than the other no account is taken of the smaller branch; the other alone represents the whole river, and its *medium filum* constitutes the *primâ facie* line of proprietary division." Phear on Rights of Water, p. 1. This may be rebutted; but, generally speaking, "an imaginary line running through the middle of the stream is the boundary, just as, if a road separates two properties, the ownership of the road belongs half-way to one and half-way to the other. It may be rebutted; but if not rebutted that is the legal presumption": *per* Lord Cranworth, L.C., in *Wishart* v. *Wyllie* (1853), 1 Macq. H. L. Cas. 389; see *Duke of Devonshire* v. *Pattinson* (1887), 20 Q. B. D. 263; *Tilbury* v. *Silva* (1890), 45 Ch. D. 98; and *Ecroyd* v. *Coulthard* (1898), 2 Ch. 358.

The rule that when a stream flows between two properties, in the absence of any evidence to the contrary, the boundary is taken to be the *medium filum* of the stream, applies, where the stream is divided by an island, only to the *medium filum aquæ* of each branch (*Great Torrington Common Conservators* v. *Moore Stevens*, [1904] 1 Ch. 347).

Though the presumption that a grant of land described as bounded by an inland river passes the adjoining half of the bed of the river may be rebutted by circumstances which show that the parties must have intended it not to pass, it will not be rebutted because subsequent circumstances, not contemplated at the time of the grant, show it to have been very disadvantageous to the grantor to have parted with the half bed, and if contemplated would probably have induced him to reserve it; nor is the presumption excluded by the fact that the grantor was owner of both banks of the river. M., being entitled to lands on both sides of a river, sold and conveyed to L. a piece of land, the dimensions of which were minutely given in the conveyance, and which were therein stated to contain 7,752 square yards, and to be bounded on the north by the river, and to be delineated on the plan drawn on the deed, and thereon coloured pink. The dimensions and colouring extended only up to the southern edge of the river, and if half the bed had been included, the area would have been 10,031 square yards instead of 7,752. The deed contained various reservations for the benefit of M., but contained nothing express to show whether the half of the bed was intended to pass or not. M. was at the time owner of a private bridge close by, from which he received tolls. Thirty years afterwards a bridge was projected to cross the river from L.'s land. The plaintiffs, who had succeeded to all M.'s property in the neighbourhood, brought their action to restrain the making the new bridge. If the grant to L. passed half the bed, no part of the new bridge would be over land of the plaintiff's:—*Held*, that the presumption that the grant included half the bed was not rebutted, and that an injunction could not be granted on the ground

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that the erection of the bridge would be a trespass. *Held* also, that a stipulation in the grant that nothing therein contained should prejudice or affect M.'s right to take tolls over his bridge did not preclude L.'s taking away custom from that bridge by the erection of a new bridge. The conveyance reserved to M., his heirs, etc., the right of entering upon the land or any part thereof for the purpose of repairing M.'s bridge. *Held*, that this did not preclude L. from erecting any structures upon the land, provided he left reasonable access for the purpose of repairing the bridge (*Micklethwait* v. *Newlay Bridge Co.* (1886), 33 Ch. D. 133). "The owner of the banks of a non-navigable river may, without any illegality, build a mill-dam across the stream within his own property, and divert the water into a mill-lade without asking the leave of the proprietors above him, provided he does not obstruct the water from flowing as freely as it was wont, and without asking the leave of those proprietors below him if he takes care to restore the water to its natural course before it enters their land": *per* Lord BLACKBURN, in *Orr-Ewing* v. *Colquhoun* (1877), 2 App. Cas. 839. In *Bourke* v. *Davis* (1889), 44 Ch. D. 110, the defendant sought to establish that a certain part of the river Mole was navigable, and was a highway, and much evidence was adduced on the subject. The principle was laid down that the claim of the defendant must be treated as if it were a claim to establish a right of highway on dry land, and that so treated the evidence did not establish the claim. It was further laid down that a right of recreation (*e.g.*, by boating) by custom upon the land of another cannot exist as a right in the public generally, but must be confined to the inhabitants of a particular district.

Cases relating to the Clyde.

Parties holding barony titles to lands situated on both sides of the Clyde, a navigable tidal river, claimed, as against the Crown and the Clyde Navigation Trustees, that the foreshores *ex adverso* their lands belonged in property to them, subject to such rights of navigation or other rights which the public and the Clyde Trustees might have over the same. The barony titles contained no express grant of foreshore, nor did they contain any specific boundaries which could be held to include the foreshore. The parties rested their claim on the grounds (1) that the barony titles alone gave them the property; (2) that coupled with their titles they had exercised from time immemorial acts of possession over the foreshore:—*Held*, affirming the decision of the court below, that the acts of possession for the prescriptive period having been proved, and following on barony title to lands so situated, they constituted a right of property in the foreshore. *Held*, also, that in this case it was not necessary to decide the question whether a barony title to lands so situated, which does not specify the exact boundary of the lands, or contain any express grant of foreshore, could alone give a right of property in the foreshore. See Lord BLACKBURN'S opinion (p. 791) as to the weight of each act of possession as evidence (*Lord Advocate* v. *Lord Blantyre* (1879), 4 App. Cas. 770). The Clyde Navigation Trustees, being empowered by ss. 76, 84 of 21 & 22 Vict. c. cxlix., to dredge the bed of the river Clyde to a depth of seventeen feet, cannot be interdicted from dredging ground which has been declared the property of the riparian proprietor, subject to any right which the public may have over it, and subject also to any rights conferred on the trustees by their Acts of Parliament—so held by the House of Lords, but without prejudice to the question of the liability of the trustees to subsequent compensation for damage (*Lord Blantyre* v. *Clyde Navigation Trustees* (1881), 6 App. Cas. 273).

By the Glasgow Police Act, 1866 (29 & 30 Vict. c. cclxxiii.), s. 384, the master of works may by notice "require any proprietor or occupier of a land or heritage" within the city, "to fence the same, or repair any chimney-stalk or flue, or chimney-head or can, or any rhone, signboard, or other thing connected with or appertaining to any building thereon, which appears to be dangerous:—*Held* (affirming the decision of the court below) that the statute gave no power to the master of works in Glasgow to compel a riparian proprietor to fence his land off from a tidal and navigable river, although a right of way gained by the public along the river bank, and fenced on the land side, was alleged to be insecure and dangerous, on account of the proximity of the river (*Lang* v. *Kerr* (1878), 3 App. Cas. 529). As to the liability of the Clyde trustees to repair damage done to the banks by executing operations in the bed of the river, see *Clyde Navigation Trustees* v. *Blantyre* (*Lord*) (1883), 10 R. 910; and as to the liability of the trustees to repair the piers of an ancient ferry on the river, see *Clyde Navigation Trustees* v. *Lord Blantyre*, [1893] A. C. 703. As to what is included in the word "river" in s. 98 of the Clyde Act, 1858, see *Clyde Navigation Trustees* v. *Laird & Son* (1883), 8 A. C. 658.

Riparian and other neighbouring proprietors—*continued.*

As to navigable tidal rivers and the rights of the public to fish, see *Reece* v. *Miller* (1882), 8 Q. B. D. 626; *Goodman* v. *Mayor, etc. of Saltash* (1882), 7 App. Cas. 633; *Neill* v. *Duke of Devonshire* (1882), 8 App. Cas. 135; *Hargreaves* v. *Diddams* (1875), L. R. 10 Q. B. 582; *Lord Leconfield* v. *Lord Lonsdale* (1870), L. R. 5 C. P. 657; *Rolle* v. *Whyte* (1868), L. R. 3 Q. B. 286; *Carlisle Corporation* v. *Graham* (1869), L. R. 4 Ex. 361; *Thakurain Ritray Koer* v. *Thakurain Sarfaray Koer* (1905), 21 T. L. R. 637; *Blower* v. *Ellis* (1886), 50 J. P. 326. There can be no public right of fishing in non-tidal waters, even where they are to some extent "navigable" rivers (*Pearce* v. *Scotcher* (1882), 9 Q. B. D. 162; *Smith* v. *Andrews*, [1891] 2 Ch. 678). As to inland non-tidal lakes, see *Bristow* v. *Cormican* (1878), 3 App. Cas. 641. Further, as to navigable rivers, see *Rex* v. *Montague* (1825), 4 B. & C. 598; and *Miles* v. *Rose* (1814), 5 Taunt. 705. For a case in which owners of salmon fishings objected to abstraction of water from a river by millowners, see *Kintore* (*Earl of*) v. *Alexander Pirie & Sons*, [1906] A. C. 478.

The maxim *Sic utere tuo ut alienum non lædas* applies as between riparian owners; and, therefore, no proprietor has a right to use the water to the prejudice of another. Nor may he use it for any purpose inconsistent with similar enjoyment in the owners above and below (*Mason* v. *Hill* (1833), 5 B. & Ad. 1). And see also *Wright* v. *Howard* (1823), 1 Sim. & Stu. 190; *Wood* v. *Waud* (1849), 3 Ex. 748; *Sampson* v. *Hoddinott* (1856), 1 C. B. (N.S.) 590; *Sharp* v. *Wilson, Rotheray & Co.* (1905), 93 L. T. 155.

"It is wholly immaterial whether the party be a proprietor above or below in the course of the river, the right being common to all the proprietors on the river; no one has a right to diminish the quantity which will, according to the natural current, flow to a proprietor below, or to throw it back upon a proprietor above. This is the necessary result of the perfect equality of right among all the proprietors of that which is common to all": *per* Mr. Justice STORY, in *Tyler* v. *Wilkinson* (1827), 4 Mason U. S. R. 397. And see *Frechette* v. *La Compagnie Manufacturière de St. Hyacinthe* (1883), 9 App. Cas. 170. It is not a good defence to show that water from a foreign source is being substituted for the water abstracted (*Stevenson* v. *Hogganfield Bleaching Co.* (1892), 30 S. L. R. 86). See also *Sharp* v. *Wilson, Rotheray & Co.*, *supra.*

Lord KINGSDOWN, in *Miner* v. *Gilmour* (1858), 12 Moo. P. C. C. 131, 156, in the course of his judgment, observed: "By the general law applicable to running streams, every riparian proprietor has a right to what may be called the ordinary use of the water flowing past his land; for instance, the reasonable use of the water for his domestic purposes and for his cattle, and this without regard to the effect which such use may have in case of deficiency upon proprietors lower down the stream. But, further, he has a right to the use of it for any purpose, or what may be deemed the extraordinary use of it, provided that he does not thereby interfere with the rights of other proprietors either above or below him. Subject to this condition, he may dam up for the purpose of a mill, or divert the water for the purpose of irrigation; but he has no right to interrupt the regular flow of the stream, if he thereby interferes with the lawful use of the water by other proprietors, and inflicts upon them a sensible injury." This statement of the law is thus referred to by MARTIN, B., in *Nuttall* v. *Bracewell* (1866), L. R. 2 Ex., at p. 9: "The law has been supposed to be well settled, and, in my opinion, is nowhere more clearly stated than by Lord KINGSDOWN in *Miner* v. *Gilmour*." In that case the plaintiff was the lessee of a mill situated on riparian land. A., through whom he derived title, had, in 1840, under a written agreement with the adjoining higher riparian owner, and subject to an annual payment, constructed a goit on the higher owner's land, intercepting the water of the stream at a weir in that land, and bringing it thence to his mill. The flow of the water through this goit had ever since been enjoyed by the millowner, and used for the purpose of working the mill; and the annual acknowledgment had been paid. The defendant, a riparian owner above the weir, and also a millowner, intercepted the water of the stream for the purpose of his mill, and the plaintiff sued for damages. The Court of Exchequer held that the plaintiff was entitled to recover. See further *Baily & Co.* v. *Clark, Son & Morland,* [1902] 1 Ch. 649.

The principles laid down in the case of *Miner* v. *Gilmour* were adopted in the House of Lords by Lord HALSBURY, L.C., in *John White & Sons* v. *J. and M. White,* [1906] A. C. 72, where it was further laid down that the ownership of an artificial dam, although it may give a right to maintain the dam, does not turn the running stream into a pond so as to give the owner of the dam an exclusive right to use the whole of the running water. See also *Portsmouth Waterworks Co.* v. *London, Brighton and South Coast Rail. Co., Times,* December 16th, 1909.

A company which purchases the land of a riparian owner stands in the same situation as he did with respect to the water rights connected with that land. A canal company was established by Act of Parliament, and had parliamentary power to take water from streams within the distance of 2,000 yards, for the purpose of making and maintaining their canal. They purchased a mill on a stream from which they had the right to take water. They thus became riparian owners, and as such they were entitled to the flow of water from brooks and streams running into that stream, subject only to the rights which other riparian owners at the upper part of the stream might lawfully exercise. The directors of a waterworks company purchased a mill on the upper part of the same stream, and so became riparian owners as the owner of that mill had been. They not only used the water for the purposes and in the manner allowed by law to every riparian owner, but collected it into a permanent reservoir for the supply of an adjacent town, and claimed such user of it as their legal right. It was held, however, that this use of the water by the directors of the waterworks company was not a reasonable use of the stream such as could justifiably be made by an upper riparian owner, and that the canal proprietors, who were also riparian owners, whose flow of water was thereby affected, were entitled to obtain an injunction to restrain such use of the water. The rights of riparian owners on the upper and lower portions respectively of a stream will be found discussed and explained in this case (*Swindon Waterworks Co.* v. *Wilts and Berks Canal Co.* (1875), L. R. 7 H. L. 697). See *Ormerod* v. *Todmorden Joint Stock Mill Co.* (1883), 11 Q. B. D. 155; and also *Blantyre* (*Lord*) v. *Dumbarton Waterworks Co.* (1888), 15 R. 56. In *Attorney-General* v. *Great Eastern Rail. Co.* (1870), 23 L. T. (N.S.) 344, Lord ROMILLY expressed the opinion that a railway company having a line adjoining a stream had no right to take water from it for supplying their locomotives. On appeal the case was decided on the ground that the obstruction of the water seriously impeded the navigation of the stream (see (1871) L. R. 6 Ch. 572). In 1878, it was decided by BACON, V.-C., that a railway company whose line crossed a stream in the immediate neighbourhood of one of their stations was entitled to take a reasonable quantity of water from the stream for supplying their locomotive engines as well as for the general purposes of the station (*Sandwich* (*Earl*) v. *Great Northern Rail. Co.* (1878), 10 Ch. D. 707). This case was overruled by the House of Lords in *McCartney* v. *Londonderry and Lough Swilly Rail. Co.,* [1904] A. C. 301. In this case the facts were as follows:—A natural stream was crossed by a railway, and flowed down to a mill. The railway company claimed the right to insert a pipe into the stream at the point of crossing (which was the only place where their land adjoined the stream), and to divert water (by carrying the pipe along the strip of railway line) into a tank upon land belonging to the company about half a mile away. This land did not abut upon the stream. From the tank the respondents supplied their locomotive engines with water. The appellant, who was a millowner lower down the stream, used the water for working a corn mill. The appellant stopped up the pipe. The House of Lords decided that the

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purposes for which the company were using the water were not purposes connected with the land where the railway crossed the stream, and that the millowner was justified in stopping up the pipe. See observations on the *Sandwich Case* at pp. 305 and 314 of the last mentioned report.

For a case of alleged damage to millowners below from the construction of a reservoir higher up the stream, see *Tatton* v. *Staffordshire Potteries Waterworks Co.* (1880), 44 J. P. 106. As to construction of a covenant for quiet enjoyment on sale of a well with the right of drawing water therefrom, see *Brain* v. *Marfell* (1880), 44 J. P. 56. Mere possession of rights corporeal or incorporeal is sufficient to maintain an action for disturbance of them against a wrongdoer (*Pullan* v. *Roughfort Bleaching Co.* (1888), 21 L. R Ir. 73).

There is no distinction between the position of a riparian owner of land abutting on a tidal and that of an owner of land abutting on a non-tidal stream, as far as regards right of access from the stream to his own land and *vice versâ*. Such right of access is a private right distinct from the right of navigating the stream, which is common to the riparian owner and the rest of the public. Such right is not to be interfered with by a licence to embank under s. 53 of the Thames Conservancy Act, 1857 (20 & 21 Vict. c. cxlvii.), but is protected by s. 179 of that Act (*Lyon* v. *Fishmongers' Co.* (1876), 1 App. Cas. 662). See now Thames Conservancy Act, 1894 (57 & 58 Vict. c. clxxxvii.). In the case of navigable or tidal rivers there must be no interference with the public right of navigation, and in order to give rise to riparian rights the land must be in actual daily contact with the stream, laterally or vertically (*North Shore Rail. Co.* v. *Pion* (1889), 14 App. Cas. 612). See *Parkdale Corporation* v. *West* (1887), 12 App. Cas. 602; *Booth* v. *Ratté* (1890) 15 App. Cas. 188; and *Earl of Ilchester* v. *Rashleigh* (1899), 61 L. T. 477. See also *Bell* v. *Quebec Corporation* (1879), 5 App. Cas. 84; and *cf. Gann* v. *Free Fishers of Whitstable* (1864), 11 H. L. Cas. 192; and as to Norfolk Broads, see *Micklethwait* v. *Vincent* (1893), 69 L. T. 57. As to the solum of sea lochs *inter fauces terræ*, see *Lord Advocate* v. *Clyde Navigation Trustees* (1891), 19 Ct. of Sess. Cas., 4th ser., 174.

A., having a prescriptive right to a flow of water led by means of a gutter laid in a millstream at a point where an ancient weir was erected, lengthened the gutter for the purpose of irrigating more land. The flow of water down C.'s millstream was diminished, and he, in consequence, pulled down the ancient weir, which prevented the water from flowing down A.'s gutter:—*Held*, that no suspension of his right to the enjoyment of the flow of water as it had formerly existed was caused by his having become a wrongdoer, and C. was not justified in stopping the excessive user by means which altogether prevented A.'s enjoyment of the water, but only in stopping it by the least injurious means in his power (*Hill* v. *Cock* (1872), 26 L. T. (N.S.) 185).

Where a non-tidal river gradually changes its bed, and thereby adds land to or takes it away from one side, the rule that the riparian owner on that side enjoys the gain or has to bear the loss applies not only where two different persons own the opposite banks, but also where the river bed belongs to a separate owner, and not to the riparian owners. The question whether any particular land is part of the bed of a non-tidal river at any particular spot or time is one of fact, to be determined not by any hard and fast rule, but having regard to all material circumstances, including past and present fluctuations of the river, and the nature, growth, and user of the land (*Hindson* v. *Ashby*, [1896] 2 Ch. 1).

In a case from South Africa, where a mining company had agreed for a specified term to "obtain and purchase all the water required by them for their mining purposes" from a water company and from no other person or persons, with a proviso excepting any water obtained by them from their own mines, it was held by the Privy Council, that on the true construction of this agreement the proviso was not limited to such mines as the mining company possessed at the date of the agreement, and that, on the other hand, they could not deprive the water company of their monopoly of supply by obtaining it gratis elsewhere (*Kimberley Waterworks Co., Ltd.* v. *De Beers Consolidated Mines, Ltd.*, [1897] A. C. 515).

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In another case from South Africa (*Remfrey* v. *Natal Surveyor-General*, [1896] A. C. 558), it was held, that where in a grant of land a right is reserved to make watercourses over it for the public use and benefit by order of Government, such reservation may include, and in the circumstances of that case did include, a right to divert water from streams in the land, and to use the water so diverted.

Operations *in alveo.*

Where one riparian proprietor had erected a permanent building in the channel of a stream, the House of Lords held that the opposite riparian proprietor might maintain an action against him without proving actual damage (*Bickett* v. *Morris* (1866), L. R. 1 H. L. Sc. 47). Lord CRANBROOK in that case remarked, that "by the law of Scotland, as by the law of England, where the lands of two conterminous proprietors are separated from each other by a running stream of water, each proprietor is *primâ facie* owner of the soil of the *alveus* or bed of the river, *ad medium filum aquæ*. The soil of the *alveus* is not the common property of the two proprietors, but the share of each belongs to him in severalty, so that, if from any cause the course of the stream should be permanently diverted, the proprietors or either side of the old channel would have a right to use the soil of the *alveus*, each of them up to what was *medium filum aquæ*, in the same way as they were entitled to the adjoining land. The appellant contended that, as a consequence, every riparian proprietor is at liberty at his pleasure to erect buildings on his share of the *alveus*, so long as the other proprietor cannot show that damage is thereby occasioned or likely to be occasioned to him. I do not think that this is a true definition of the law." See further, *Palmer* v. *Persse* (1877), Ir. R. 11 Eq. 616, in which the principle of that case was applied, and in which it was further decided that that principle was not confined to the case of opposite riparian proprietors. As to where the *medium filum* should be drawn, see *Menzies* v. *Marquis of Breadalbane* (1901), 39 S. L. R. 35. See also *Ross* v. *Powrie and Pitcaithley* (1891), Ct. of Sess. Cas., 19 Rettie, 314; *Edleston* v. *Crossley & Sons, Ltd.* (1868), 18 L. T. (N.S.) 15, and *Ambler & Sons, Ltd.* v. *Bradford Corporation*, [1902] 2 Ch. 585.

The defendants were owners of the soil of a stream which supplied water to two print works. A., whilst occupier of both works, erected a weir across the stream, and thereby diverted the water from one of the works. The plaintiff, becoming lessee of the last-mentioned work, and entitled to the water of the stream, removed the weir. A. afterwards, and without any authority from the defendants, and against their will, replaced the weir:—*Held*, that the defendants were not responsible for the act of A., or for the continuance of the nuisance (*Saxby* v. *M. S. & L. Rail. Co.* (1869), L. R. 4 C. P. 198). A wharf-owner drove piles into the bed of a river, extending the wharf so as to occupy three feet out of a breadth of about sixty feet available for navigation:—*Held*, that this was such an obstruction as would be restrained at the suit of a municipal corporation empowered by Act of Parliament to remove obstructions. Decree of the Master of the Rolls affirmed:—*Held* (*per* Master of the Rolls), that an owner of land at the side of a public navigable river has no right to erect on the bed of the river, for the benefit of his own trade, any structure, whether any actual obstruction to the navigation of the river will or will not be thereby occasioned; and any benefit to his own trade is too remote to be held to be for the advantage of the public generally, and so to justify the erection (*Attorney-General* v. *Terry* (1874), L. R. 9 Ch. 423). An information and bill was filed by the plaintiff, a riparian proprietor on a tidal navigable river, to restrain the defendant, an opposite riparian proprietor, from constructing a jetty in the *alveus* of the river, so as to injure the plaintiff's property and interfere with the navigation:—*Held*, that a riparian proprietor had no greater right to use the *alveus* of a tidal than a non-tidal river, and that although the plaintiff had proved no serious injury to his property, he was entitled to an injunction:—*Held*, also, that the suit being by information and bill, was properly framed in respect of the private and public wrong complained of (*Attorney-General* v. *Earl of Lonsdale* (1868), L. R. 7 Eq. 377). See a later stage of the case (1870), L. R. 6 Ch. 141. See further the following Court of Session (Scotland) cases as to operations *in alveo*: *Duke of Roxburghe* v. *Waldie's Trustees* (1879), 6 Rettie, 663 (erection of a cauld);

Robertson v. *Foote* (1879), *ibid.*, 1290 (removing massive boulders); *Murdoch* v. *Wallace* (1881), 8 Rettie, 855 (embankment); *Lyell's Trustees* v. *Forfarshire Road Trustees* (1882), 9 Rettie, 792 (taking stones from banks and bed of river to repair roads); and see further, *Jamieson* v. *Police Commissioners of Dundee* (1884), 12 Rettie, 300; *Filshill* v. *Campbell* (1887), 14 Rettie, 592, and *McIntyre* v. *McGavin*, [1893] A. C. 268. Where the defendants, who were riparian proprietors, with the object of forming a water company, and selling the water of a slender stream, first to other riparian proprietors, and then, if any remained over, to anyone who chose to buy it, erected a weir *in alveo*, which had a sensibly injurious effect upon the flow to and past the plaintiff's premises, and could not be used for the purpose for which it was erected without a continuance of such injury:—*Held*, that the erection of the weir was illegal, and that the plaintiffs were entitled to a perpetual injunction restraining the defendants, their servants, etc., from continuing the erection of the structure complained of, and from obstructing the rights of the plaintiffs to the flow of the water, according to its usual course and volume, to and past their lands (*Belfast Ropeworks Co.* v. *Boyd* (1887), 21 L. R. Ir. 560). An erection *in alveo fluminis* in not *per se* illegal, because the defendant erecting it cannot prove the impossibility, as well as the absence, of injury to the plaintiffs. The reasonable uses which a riparian proprietor may lawfully make of the water passing his land, include turning its natural gravitation into water power, by weirs or other like contrivances erected *in alveo fluminis*, although their effect, if not carefully and reasonably used, might be to cause sensible injury to lower proprietors. In an action for wrongfully obstructing the flow of a river by increasing the height of a weir, whereby the plaintiff's land abutting on the river was flooded, it was held that if the effect of the acts complained of was to raise the water of the river as it flowed past the plaintiff's land above the height at which it ought of right to have flowed, such raising would be an actionable wrong, and would entitle the plaintiff to a finding in his favour with nominal damages, actual damage not being essential in order to maintain the action (*McGlone* v. *Smith* (1888), 22 L. R. Ir. 559). As to weirs across a navigable river, see *Williams* v. *Wilcox* (1838), 8 A. & E. 314. If property (*e.g.*, oysters) be placed in the channel of a public navigable river so as to create a public nuisance, a person navigating is not justified in damaging such property by running his vessel against it, if he has room to pass without so doing; for an individual cannot abate a nuisance if he is not otherwise injured by it than as one of the public. And, therefore, the fact that such property was a nuisance was no excuse for running upon it negligently (*Colchester Corporation* v. *Brooke* (1846), 7 Q. B. 339). The bed of all tidal navigable rivers and of all arms of the sea is in the Crown, but is so for the benefit of the subjects. The right of navigation belongs, by law, to all the subjects of the realm, and the right to anchor is a necessary part of the right to navigate (*Gann* v. *Free Fishers of Whitstable* (1864), 11 H. L. Cas. 192).

Sic utere tuo

The accustomed course of a natural stream which a riparian owner is entitled to have preserved is the natural and apparently permanent course existing when the right is asserted or called in question. Where, by long-continued natural accretion of gravel, the bed of a river, and consequently the flow of water, have become permanently altered, it is not within the rights of a riparian owner, by removing the accretion, to restore the flow of water to its former state as to velocity and direction (*Withers* v. *Purchase* (1889), 60 L. T. 819). A riparian owner has the right to raise the banks of the river from time to time, as it becomes necessary, so as to confine the flood-water within the banks and prevent it from overflowing his lands, so long as he does not contravene the maxim *Sic utere tuo ut alienum non lædas* (*Ridge* v. *Midland Rail. Co.* (1889), 53 J. P. 55).

A. was possessor and occupier of an ancient mill and lands adjoining, and carried on therein the business of a manufacturer of paper, which had from time immemorial been carried on in them. The mill and lands were situate in a valley at the foot of a range of hills, sloping towards and terminating in a tall precipitous rock abutting upon them. Inside this rock, and at the

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elevation of a few feet above the lands, was, from time immemorial, a natural cavern, and the water produced by the rainfall on a portion of the hills ran by underground passages into it, and, after traversing the floor of the cavern in a defined stream, flowed by an underground passage out of the cavern into an open natural basin in the lands of A., and thence in an open and defined stream to the mill in a pure and unpolluted state. In 1857 B. became possessor and occupier of land and premises on the summit of the hills, at a higher elevation than the cavern, and worked on them machinery for extracting from the soil minute particles of lead intermixed with it. In working this he constructed eight buddles, or circular pits, in the surface of the ground, into which water was brought through artificial cuts. From these buddles polluted water was discharged into drains communicating with two swallets or natural rents existing from time immemorial in the limestone rock of the hills, and having an underground passage for water communicating with an outlet, at which the water escaped in an open stream at their foot. The water passages from these two swallets communicated with the cavern through which the polluted water flowed, and thence mingled with the stream flowing through the cavern into the basin, and thence to A.'s lands and mill, whereby the water was fouled:—*Held*, that an action for fouling the stream was maintainable by A. against B. (*Hodgkinson* v. *Ennor* (1863), 4 B. & S. 229). In giving judgment, BLACKBURN, J., observed: "The defendant has a right to use the water which was to be found upon his own land for the purpose of washing his lead, but then, as was laid down in *Tenant* v. *Goldwin* (1704), 2 Ld. Raym. 1089, he must use it so as not to injure his neighbour's property; or, as it is concisely and quaintly stated in the report, 1 Salk. 360, 'he whose dirt it is must keep it that it may not trespass.' So here, the defendant ought to take care that the water does not come to the mill in such a way as to injure his neighbour. He has not kept it so as not to be a trespass to the plaintiff, who had a right to have the water in a clean state, and has instead thereof got it in a polluted and filthy state. There is, therefore, *damnum* and also *injuria*, and a cause of action against the defendant. In *Humphries* v. *Cousins* (1877), 2 C. P. D. 239, it appeared that the plaintiff and the defendant were occupiers of adjoining houses. An old drain which commenced on the defendant's premises and then passed under and received the sewage of several other houses, turned back under the defendant's house and thence under the cellar of the plaintiff's house and ultimately into a public sewer. The part of the return drain which passed through the defendant's premises being decayed, the sewage escaped, and, flowing into the plaintiff's cellar, did damage. The defendant was unaware of the existence of this return drain, and consequently of its want of repair. It was held, following *Tenant* v. *Goldwin*, *supra*, however, that the defendant was liable for the damage done to the plaintiff; for that defendant's duty was to keep the sewage which he himself was bound to receive from passing from his own premises to the plaintiff's premises, otherwise than along the old accustomed channel, and that this duty was independent of negligence on his part, and independent of his knowledge or ignorance of the existence of the drain. Where the plaintiff by permission of a canal company made a communication from the canal to his own premises by which he obtained water to feed the boilers of his engine, and the defendant, without any right and without any permission from the canal company, fouled the water in the canal whereby the water as it came to the plaintiff's premises was foul, and by the use of it the plaintiff's boilers were injured, the Court of Exchequer held that an action was maintainable, but the Court of Exchequer Chamber reversed this decision after considerable difference of opinion (*Laing* v. *Whaley* (1858), 3 H. & N. 675, 901. For the exact form in which the judgment was ultimately entered, see 3 H. & N. 901). The plaintiff's land adjoined a brook on the other side of which was a rubble drain from which, by means of a syphon under the brook, the plaintiff, with the consent of the landowner derived a supply of water for domestic purposes. The defendants, with the consent of the same landowner, opened the drain and kept it open for ten weeks, whereby the water coming to the plaintiff became fouled. The plaintiff brought an action for damages in a county court, and in order to give jurisdiction waived any question of easement or right. A judgment for the defendants was upheld on appeal by a Divisional Court (*Dickinson* v. *Shepley, etc., Sewerage Board* (1904), 68 J. P. 363).

The proprietors of a mill on the river Kelvin under a Crown grant conferring on them the mill, mill-dams, aqueducts, and all the privileges and pertinents thereof, drew from the dam for more than forty years 1,200 cubic feet per minute of water for the use of their mill. Thereafter, they extended the mill and increased its supply to 6,000 cubic feet per minute. The proprietors of another mill, situated on the opposite bank, and drawing its water from the same dam, under a title containing no express grant of water rights, had for more than forty years drawn 2,077 cubic feet per minute from the dam, but only after the right of the first-mentioned mill to the first water was satisfied. It was held by the second division of the Court of Session that the owners of the first-mentioned mill were entitled to a declarator that they were entitled to the first water from the dam for the use of their mill to the extent of 6,000 cubic feet per minute (*J. and M. White* v. *John White & Sons* (1905), 42 S. L. R. 330). On appeal, the House of Lords reversed this decision, holding that the owners had no right to abstract the water except to the extent to which they had had prescriptive use (*John White & Sons* v. *J. and M. White*, [1906] A. C. 72).

A party acquires by twenty years' enjoyment a right to the use of water flowing through his land in a defined artificial channel, which was originally made for the benefit of all the persons by or through whose land the water was, by means of such channel caused to flow (*Powell* v. *Butler* (1871), 5 Ir. R. C. L. 309). See *Rameshur Pershad Narain Singh* v. *Koonj Behari Pattuk*, and other cases cited, *ante*, p. 403. The defendants in 1834 demised to the plaintiffs the coal under the C. estate for fifty years, with powers to sink pits, make soughs, etc., erect engines and make drains, etc., for supplying such engines with water, and also to do certain other acts on the surface for the better draining and working the demised mines and any other mines of which the plaintiffs might become lessees under the lands of any other persons. In 1836 the plaintiffs took a lease for thirty-five years of the O. Colliery from a neighbouring landowner. In 1846 the plaintiffs made a drain about a mile long, chiefly on the C. estate, by which they diverted a small natural stream on the C. estate, and brought it down to the O. Colliery, where they made reservoirs for the water at considerable expense. They did not ask leave to make the drain, but the defendants' agent saw the work going on, and encouraged it. In 1872 the plaintiffs became owners in fee of the O. Colliery. In 1884, when the lease from the defendants expired, the defendants stopped the drain and diverted the water. The plaintiffs, claiming a right by prescription to the water, commenced this action to restrain them from doing so. The vice-chancellor of the county palatine held that the watercourse was made under the powers of the lease, and that the right to the water expired at the end of the lease, and he dismissed the action :—*Held*, on appeal, that this dismissal was right, for that if the making of the drain was not authorised by the lease (as to which the court gave no opinion), it was made and enjoyed either under the belief of both parties that it was authorised by the lease, or under a comity between landlord and tenant, and that there was no enjoyment as of right so as to give the tenant a right to the water after the lease had expired (*Chamber Colliery Co.* v. *Hopwood* (1886), 32 Ch. D. 549). By deed in 1791 A. obtained a demise from B. of an underground goit or drain to be then constructed in B.'s land for the purpose of conducting water from A.'s mill so long as an annual rent of £2 2*s.* should be paid by A. to B. In 1836 the demise of 1791 was put an end to, and liberty was given to A., who was at that time yearly tenant from B. of the land through which the goit ran, to change the goit or drain of 1791, and to substitute a new cut for conducting pure and clean water at the like rent of £2 2*s.* The new cut was made and used for pure water, and the old goit (as the plaintiff alleged) continued to be used for foul water. In 1866 the land through which the goits ran was sold to C., and in 1867 A.'s yearly tenancy of the land was determined. In an action by A. in 1879 to restrain C. from interfering with his use of the old goit, to which he claimed title by prescription from alleged open and uninterrupted use and enjoyment thereof

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from 1836:—*Held*, that until 1867 A. could not acquire an easement in the land of which he was yearly tenant, distinct from the use and enjoyment of such land, as against B., his landlord, and accordingly that, assuming the open and uninterrupted user from 1836 to have been proved, he had failed to establish any title by prescription as against C. (*Outram* v. *Maude* (1881), 17 Ch. D. 391).

Further questions as to riparian rights.

A navigable river is a public highway, navigable by all subjects of the realm in a reasonable manner and for a reasonable purpose. Accordingly, a riparian owner has a right to moor a vessel of ordinary size alongside his wharf for the purpose of loading or unloading, at reasonable times and for a reasonable time; and the court will restrain by injunction the owner of adjoining premises from interfering with the access of such vessel, even though the vessel may overlap his own premises, though such vessel would not be allowed to interfere with the proper right of access to the neighbouring premises if used as a wharf, nor to the free entrance to or exit from such premises, if used as a dock, by other vessels (*Original Hartlepool Collieries Co.* v. *Gibb* (1877), 5 Ch. D. 713). This case was followed in *Land Securities Co., Ltd.* v. *Commercial Gas Co.* (1902), 18 T. L. R. 405. See cases as to rights of fishing, *ante*, p. 407.

Where the defendants, who were justices of the peace for the county, and also on the committee of visitors of the county gaol, took, by means of pipes and machinery, water from a navigable river, over which the plaintiffs had the control, under 17 Car. 2, c. xi., and 13 Geo. 2, c. 26, for the purposes of the gaol without the permission of the plaintiffs:—*Held*, that upon the true construction of the 13 Geo. 2, c. 26, s. 2, the plaintiffs had not such a limited right in the river as a private grant of the river might have conveyed, but that it created a property and interest in the water which was interfered with by the abstraction of it for the purposes to which it was applied by the defendants, which purposes were more extensive than those for which a riparian proprietor could insist on appropriating a stream as it passed his land, and that it was not necessary that there should be an actual damage to the navigation, because the legislature intended to give the company such an interest in all the water of the river for the purposes of navigation as was interfered with by the abstraction of any part thereof (*The Proprietors of the Medway Navigation* v. *The Earl of Romney* (1861), 9 C. B. (N.S.) 575.) See *per* Lord KINGSDOWN in *Miner* v. *Gilmour*, cited *supra*, p. 407.

If the owner of land adjoining a stream has once appropriated the water to a beneficial purpose, he may maintain an action against any person diverting it from its usual course, though such diversion be the continuation of an act done previous to that beneficial appropriation on his part, provided such diversion has not continued for a sufficient length of time to confer an easement (*Mason* v. *Hill* (1833), 5 B. & Ad. 1).

Where a man has exclusive right to the water of a stream, and by diverting it to a mill increases its usefulness, any person obstructing the flow of water is liable for the full damage sustained, although such damage is increased by the use to which the water has been so put; and although the person putting it to that use has obtained no prescriptive right so to use it (*Holker* v. *Porritt* (1875), L. R. 10 Ex. 59).

A riparian proprietor cannot keep the land abutting on a river, the possession of which gives him his water rights, and at the same time, by granting a part of that land which does not abut on the river, transfer those rights, or any of them, and thus create a right in gross, by assigning a portion of his rights appurtenant. The rights which a riparian proprietor has with respect to the water are entirely derived from possession of land abutting on the river. If he grants away any portion of his land so abutting, the grantee becomes a riparian proprietor and has similar rights; but if he gives away a portion of his estate not abutting on the river, then the grantee of the land would have no water rights by virtue merely of his occupation, nor can he have them by express grant, except as against the grantor, so as to sue other persons in his own name for an infringement of them. BRAMWELL, B., *dissentiente*

(*Stockport Waterworks* v. *Potter* (1861), 3 H. & C. 300). This case was particularly considered in *Nuttall* v. *Bracewell* (1866), L. R. 2 Ex. 1, cited *supra*, p. 407; and was followed in *Ormerod* v. *Todmorden Mill Co.* (1883), 11 Q. B. D. 155. But where the owner of land not abutting on a river, with the licence of a riparian owner, took water from a river, and, after using it for cooling certain apparatus, returned it to the river undiminished and unpolluted, it was held that a lower riparian owner could not obtain an injunction against the landowner so taking the water or against the riparian owner through whose land it was taken (*Kensit* v. *G. E. Rail. Co.* (1884), 27 Ch. D. 122). See remarks on the foregoing case in the judgments of the House of Lords in *McCartney* v. *Londonderry and Lough Swilly Rail. Co.*, [1904] A. C. 301. The defendant diverted a stream as it passed through his premises, but restored it undiminished, as to the quantity of water, to its former channel before it reached the premises of the plaintiff; the defendant also employed the stream, while on his premises, in a way which rendered the water unfit for ordinary use, but he alleged that the water by the time it reached the plaintiff's land was freed to the utmost possible extent from any noxious ingredients with which it had become impregnated. And it did not appear that any actual damage was sustained by the plaintiff. In these circumstances Lord COTTENHAM, L.C., dissolved an injunction which had been granted (*Elmhirst* v. *Spencer* (1849), 2 Mac. & G. 45). *Cf. Northam* v. *Hurley* (1853), 1 E. & B. 665; *Sampson* v. *Hoddinott* (1856), 1 C. B. (N.S.) 590; *Bonthrone* v. *Downie* (1878), Ct. of Sess. Cas., 6 Rettie, 324; and *Sharp* v. *Wilson* (1905), 93 L. T. 155.

Before 1800, a canal company, under powers of an Act of Parliament, diverted, for the purposes of the canal, a considerable part of the water from a brook which flowed through the plaintiff's land, at a point above the plaintiff's land, the rest of the water continuing to flow in its natural channel. In 1847, the Act was passed authorising the defendants, a railway company, to purchase the canal, to discontinue the use of it, and to fill it up, and sell such parts as were not used for the railway. Under these powers, the use of the canal was discontinued in 1853, and in 1864 the defendants made a cut by which they restored to the brook, at a point above the plaintiff's land, the water which had been diverted from it. In 1865 the defendants conveyed the part of the canal on which they had made the cut to a purchaser in fee. The bed of the stream, owing to the diminished scour of the water from 1800 to 1853, had been silted up, so as to be insufficient to carry off the water coming down in extraordinary floods. In 1866 such a flood occurred—the water overflowed the plaintiff's land and damaged his crops, upon which he brought an action against the defendants:—*Held*, that there being no obligation imposed upon the canal company to continue the diversion, the plaintiff had no right of action:—By BLACKBURN and HANNEN, JJ.: On the ground that, though the claim to have the water, which would otherwise have come down to the plaintiff's land, diverted over other land, was a claim to a watercourse within the Prescription Act, 1832 (2 & 3 Will. 4, c. 71), s. 2, yet the enjoyment was not as of right; and therefore, though for more than forty years, conferred no right on the plaintiff. By COCKBURN, C.J.: On the ground that the plaintiff, the owner of the servient tenement, could acquire, by the mere existence of the easement, no right as against the owner of the dominant tenement to the continuance of the diversion. *Quœre*, by BLACKBURN and HANNEN, JJ., whether such a right could be acquired under the Prescription Act, against a canal company; *semble*, by the same judges, on the authority of *Roswell* v. *Prior* (1701), 12 Mod. 635, that the fact of the defendants having parted with the property would not have affected their liability (*Mason* v. *Shrewsbury and Hereford Rail. Co.* (1871), L. R. 6 Q. B. 578).

In a case in which one canal company laid claim to waste water escaping from the lock of another company and relied on prescription, it was held that, on the construction of the Acts of Parliament, any grant of such wastes would have been *ultra vires*; no prescriptive right by user could be set up; and it was also held that the doctrines as to the use of water in natural or artificial streams does not apply to water passing through locks in a canal,

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such water being accumulated under the authority of the legislature, to be used in a particular manner for the benefit of the public (*Staffordshire and Worcestershire Canal Navigation Co.* v. *Birmingham Canal Navigation Co.* (1866), L. R. 1 H. L. 254). See further hereon *Attorney-General* v. *G. N. Rail. Co.* (1908), 73 J. P. 41, and other cases there cited; and *cf. Ayr Harbour Trustees* v. *Oswald* (1883), 8 App. Cas. 634, and *Preston Corporation* v. *Fulwood L. B.*, *ante*, p. 168, and see cases cited, p. 403. See also *Creyke* v. *Hatfield Chase Level Corporation* (1896), 12 T. L. R. 383, in which case the plaintiff claimed the "right of warping his adjoint lands by the water of the 'Dutch' or New River, through the New Clough free from any control by the defendants."

A mine had from before the time of living memory been worked by tin-bounders, according to the custom of Cornwall, which enables any person to mark out a piece of waste ground, the owner of which does not choose to work the mines under it, and work them without the consent of the owner, yielding to the owner a share of the proceeds. The bounders had from before the time of living memory used for the purpose of their works the water of an artificial watercourse arising in the land of another person. The bounders abandoned the mine in 1856, since which the owners had been in possession. A bill by the owners to restrain the diversion of the watercourse by the owner of the land in which it rose was dismissed by KINDERSLEY, V.-C., on the ground that there was no privity of estate between the owners and the bounders, and that the owner, therefore, could not claim an easement by prescription on the ground of their enjoyment of it:—*Held*, on appeal, that an injunction ought to be granted, for that it ought to be presumed that a right to use the waters had been acquired by arrangement with the owner of the mine as well as with the bounders (*Ivimey* v. *Stocker* (1865), L. R. 1 Ch. 396).

A riparian proprietor has a right, by means of water-wheels and machinery erected by him for that purpose, to pump up water from a natural stream flowing past his land to a reservoir, and to convey it thence by pipes to his dwelling-house upon another estate at a distance from the stream, and he may there apply such water to his domestic and other necessary purposes of utility; provided he take only a reasonable quantity, with reference to the size of the stream, and the rights of his neighbour; but he has no right to take more water, by means of the wheels and machinery, than he would have a right to take otherwise (*Earl of Norbury* v. *Kitchen* (1863), 7 L. T. (N.S.) 685).

Where a public body is under an Act of Parliament entrusted with powers and duties for a public purpose, the court will give credit to them as being the best judges of what they want for that purpose. Accordingly a railway company was restrained from taking a large quantity of water for the use of their station from a river under the control of conservators, credit being given to the evidence, on the part of the conservators, that taking such water would impede the navigation, against the evidence on the part of the railway company, that taking such water would produce no appreciable effect (*Attorney-General* v. *G. E. Rail. Co.* (1871), L. R. 6 Ch. 572).

B. washed a van of his on the part of the street opposite to his coach-house, and the water so used ran along the gutters by the side of the street for about seventy feet down to the corner of another street, where, meeting an obstruction, it accumulated and extended over part of the roadway, instead of going, as usual, into the sewer, and there being a sharp frost at the time, it shortly became frozen over. The cleaning a van in the street was an offence under the Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), s. 54 (1); but B. was not shown to have known of the obstruction at the corner, and if he had cleaned the van in the coach-house, the water would also have gone into the same gutter in the street. It was held, that B. was not liable for damage caused to a horse by slipping whilst passing over the frozen water at the corner, as such damage was too remote, and was not the immediate and proximate cause of his act (*Sharp* v. *Powell* (1872), L. R. 7 C. P. 253; and see *Clark* v. *Chambers* (1878), 3 Q. B. D. 327).

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Embanking rivers, etc.

No one is at common law entitled to embank a river or stream in such a way as to cause the water to flow with greater violence against and injure the lands of adjoining proprietors. The case is different, however, in regard to embankments against the sea, which it has been said is a "common enemy." Therefore, in the case of *The King* v. *The Commissioners of Sewers for the Levels of Pagham* (1828), 8 B. & C. 355, where commissioners of sewers, acting *bonâ fide* for the benefit of the levels for which they were appointed, directed certain defences against the inroads of the sea, which caused it to flow with greater violence against and injure the adjoining land not within the levels; it was held, that they could not be compelled to make compensation to the owner of it, or to erect new works for its protection. "I am of opinion," said Lord TENTERDEN, "that the only safe rule to lay down is this, that each landowner, for himself, or the commissioners acting for several landowners, may erect such defences for the land under their care as the necessity of the case requires, leaving it to others, in like manner, to protect themselves against the common enemy." See also *The King* v. *Bognor Commissioners* (1828), 6 L. J. K. B. 338. But if a stream floods the adjoining lands in an unusual manner, the landowner may, it seems, fence against it within the period of prescription. He may raise the banks to keep the stream within its ancient bed if he can do so without injury to others (*Trafford* v. *Rex* (1832), 8 Bing. 204; and see *Ridge* v. *Midland Rail. Co.* (1889), 53 J. P. 55). And in the case of subterranean water, as he on whose land it comes is entitled to intercept or withdraw it, so it may be let loose into the *substrata* of adjacent land; and the owner of such adjacent land, if desirous of preventing its influx on his land, may defend himself against it as against a common enemy (*Smith* v. *Kenrick* (1849), 7 C. B. 515). In the case of the *Attorney-General* v. *Earl of Lonsdale* (1868), L. R. 7 Eq. 377, where the plaintiff and the defendant were opposite riparian proprietors on the banks of a navigable tidal river, it was held, that the defendant could not, for the protection of his own soil or otherwise, construct a jetty projecting into the bed of the river, whereby the tidal water was thrown with greater violence upon the plaintiff's shore, and the public navigation of the river was or might be impeded; and that a suit by information and bill to restrain the erection of such a jetty was properly constituted. In this case the contention of the defendant was, that tidal waters ought to be considered in the same position as the sea in the *Pagham Case*, and that he was therefore entitled to protect himself against their encroachments. See also *Neild* v. *L. & N. W. Rail. Co.*, cited *ante*, p. 399; and *Hudson* v. *Tabor* (1877), 2 Q. B. D. 290.

Seawall.

As to the liability of frontagers to keep a seawall in repair, see *Hudson* v. *Tabor* (1877), 2 Q. B. D. 290; and see further as to seawalls, *Attorney-General* v. *Tomline* (1880), 14 Ch. D. 58; *Bramlett* v. *Tees Conservancy Commissioners* (1885), 49 J. P. 214; *Hesketh* v. *Bray* (1888), 21 Q. B. D. 444; *L. & N. W. Rail. Co.* v. *Fobbing Levels Commissioners* (1897), 75 L. T. 629; and *Sandgate U. D. C.* v. *Kent C. C.* (1898), 79 L. T. 425.

Underground water.

The law with regard to the question of ownership in underground water first became definitely settled by the case of *Chasemore* v. *Richards* (1859), 7 H. L. Cas. 349. The plaintiff was the occupier of an ancient mill on the river Wandle, and for more than sixty years he and the preceding occupiers of the mill had used and enjoyed as of right the flow of the river for the purpose of working their mill. The defendant represented the members of the Local Board of Health of Croydon (as the local authority was then styled), who, for the purposes of supplying the town of Croydon with water, sank a well to the depth of seventy-four feet in their own land in the town of Croydon and about a quarter of a mile from the river Wandle, and pumped up large quantities of water from their well. By means of the well and the pumping the local board of health diverted, abstracted, and intercepted underground water (but underground water only) that otherwise would have flowed and found its way into the river Wandle, and so to the plaintiff's mill. The quantity so diverted, abstracted, and intercepted was sufficient to be of sensible value towards the working of the plaintiff's mill. The water so diverted was underground water flowing in no defined channel, but percolating or oozing through the soil, more or less, according to the quantity of

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rain that might chance to fall. The learned lords who took part in the decision of that case were Lords CHELMSFORD, CRANWORTH, WENSLEYDALE, KINGSDOWN, and BROUGHAM. The judgment of the House of Lords was unanimous. They held that the principles which regulate the rights of owners of land in respect to water flowing in known and defined channels, whether upon or below the surface of the ground, do not apply to underground water which percolates through the strata in no known channels. "The right to running water," said Lord CRANWORTH in the course of his judgment (p. 379), "has always been properly described as a natural right, just like the right to the air we breathe; they are the gifts of nature, and no one has a right to appropriate them. There is no difficulty in enforcing that right, because running water is something visible, and no one can interrupt it without knowing whether he does or does not do injury to those who are above or below him. But if the doctrine could be applied to water merely percolating, as it is said, through the soil, and eventually reaching some stream, it would always be a matter that would require the evidence of scientific men to state whether or not there had been interruption, and whether or not there had been injury. It is a process of nature not apparent, and therefore such percolating water has not received the protection which water running in a natural channel on the surface has always received."

To the like effect was the earlier case of *Acton* v. *Blundell* (1843), 12 M. & W. 324, in which by the sinking of two coalpits underground percolating water had been drained off which otherwise would have reached the well of a cotton spinner at Wigan. Another earlier case, *Dickinson* v. *Grand Junction Canal Co.* (1852), 7 Ex. 282, is to be distinguished, as that case really turned upon the construction of an agreement between the parties and of a private Act of Parliament. This distinction is pointed out by WIGHTMAN, J., who delivered the opinion of the consulted judges in *Chasemore* v. *Richards*. (See 7 H. L. Cas., at p. 369).

An owner of land has an unqualified right to drain it for agricultural purposes in order to get rid of mere surface water, which is casual and follows no regular or defined course (*Rawstron* v. *Taylor* (1855), 11 Ex. 36). This case was soon followed by another, in which it was decided that a landowner has a right to appropriate surface water which flows over his land in no defined channel, although the water is thereby prevented from reaching a watercourse which it previously supplied, and which had for more than fifty years worked the plaintiff's mill (*Broadbent* v. *Ramsbotham* (1856), 11 Ex. 602). ALDERSON, B., in this case, spoke of the water as "water from the heavens," and as water which "squanders itself (so to speak) over the adjoining surface" (see p. 615).

The more important cases which have followed *Chasemore* v. *Richards* will now be examined. In *Dudden* v. *Clutton Union* (1857), 1 H. & N. 627, there was a spring from which the water flowed in a natural stream which turned the plaintiff's mill. The defendants, for the purposes of their workhouse, sank a tank into the ground and caught the water as it rose from the earth. This was taking not underground percolating water, but water after it had arrived at the springhead. The plaintiff therefore succeeded. In *R.* v. *Metropolitan Board of Works* (1863), 3 B. & S. 710, the defendants, by the construction of a sewer under statutory authority, drained certain springs rising in a bed of gravel, and so prevented them from finding their way into a pond, so that it became dry, as did a rivulet and other ponds dependent thereon. It was held that independently of the statute, the landowner was not entitled to compensation, as the effect of the sewer was only to intercept underground percolating water which would otherwise have risen into the pond. On this point, see also *Brain* v. *Marfell* (1880), 41 L. T. 455, and *New River Co.* v. *Johnson* (1860), 2 E. & E. 435. In *Grand Junction Canal Co.* v. *Shugar* (1871), L. R. 6 Ch. 483, it appeared that the Local Board of Tring made a drain which abstracted water which otherwise would have found its way into a pond which helped to supply the canal. The drain abstracted both underground percolating water and also water running in a defined channel. The case did not turn upon any question of abstracting underground percolating water, but it turned entirely upon the question of the abstraction of water running in a defined overground channel, by reason of the faulty construction of a drain. On this latter ground, Lord HATHERLEY, L.C., decided in favour of the plaintiff. The distinction has been clearly pointed out in later cases, viz., by VAUGHAN WILLIAMS, L.J., in *Jordeson* v. *Sutton Southcoates and Drypool Gas Co.*, cited *infra*, and by NORTH, J., in *Bradford Corporation* v. *Pickles*, also cited *infra*. The case of *Ballacorkish Silver, Lead, and Copper Mining Co.* v. *Harrison* (1873), L. R. 5 P. C. 49, was the ordinary case of the withdrawal into a mine of underground percolating water which otherwise would have found its way into a spring. In *Bunting* v. *Hicks* (1894), 70 L. T. 455, there was no taking of underground percolating water, but of water after it had reached the surface, and hence an injunction was granted. The Metropolitan Water Board, as successors of the K. Waterworks Co., were owners of a well and pumping station, situated in the vicinity of a natural stream. The well was lined with steel cylinders to a depth of seventy-six feet from the top, and no water from the adjacent soil could get into the well except below the cylinders. The board pumped water from the well, and thereby reduced the general level of the water in the surrounding soil, in consequence of which some of the water flowing down the stream leaked out through the bed and sides of the stream, and the volume of water in the stream, which reached the property of a riparian owner lower down the stream, was diminished. None of the water which so escaped from the stream ever got into the board's well. In an action for damages for withdrawal of water it was held, distinguishing *Grand Junction Canal Co.* v. *Shugar*, *supra*, that the riparian owner had no cause of action, as the board did not by their pumping appropriate any of the stream water, but only caused it to sink into the ground by withdrawing the support of subterranean water (*English* v. *Metropolitan Water Board*, [1907] 1 K. B. 588; 71 J. P. 313). In *Bradford Corporation* v. *Pickles*, [1895] A. C. 587, the respondent began to sink a shaft on his land near to a spring from which the corporation derived some of their water supply, and also to drive a level through his land for the stated purpose of draining the strata with a view to the working of his minerals. These operations had the effect of diminishing to some extent the amount of water in the spring, and it became apparent that if persevered in, they would result in a considerable and permanent diminution of the water supply. The House of Lords, affirming the judgment of the Court of Appeal, held that the respondent was within his rights in what he had done. Lord HALSBURY, L.C., said: "The acts done or sought to be done by the defendant were all upon his own land, and the interference, whatever it is, with the flow of water is an interference with water which is underground and not shown to be water flowing in any defined stream, but is percolating water, which, but for such interference, would undoubtedly reach the plaintiffs' works, and in that sense does deprive them of the water which they would otherwise get." A further point decided in this case was that, if a man has a right to do a particular act, his motive in doing so is immaterial and cannot render the act unlawful. The case of *Mostyn* v. *Atherton*, [1899] 2 Ch. 360, related to St. Winifred's Well, in the urban district of Holywell in Flintshire. It was a famous well and had been known for centuries. A natural stream flowed from the well to the estuary of the river Dee. On the banks of this stream were situated mills and works making use of the water. The district council, who were in possession of the land from which the water issued, granted to the defendant the right to abstract water from the well for sale, with a right to use certain existing pipes tapping the well which had been inserted by the promoters of a waterworks company formerly projected, but now abandoned. This was not a case of abstracting underground percolating water, and BYRNE, J., granted an injunction. For a Scotch case following on the lines of *Chasemore* v. *Richards*, see *Milton* v. *Glen Moray Glenlivet Distillery Co., Ltd.* (1898), Ct. of Sess. Cas., 1 Fraser, 135.

See further on this subject of underground water the INTRODUCTION at pp. 84 *et seq.*

What is a

In the course of his judgment in *Chasemore* v. *Richards*, Lord CHELMSFORD uses the expressions "certain and definite course," and "a certain and known and

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defined course, whether in an open visible stream or in a known subterranean channel," as contrasts or antitheses to "water percolating through underground strata, which has no certain course, no defined limits, but which oozes through the soil in every direction in which the rain penetrates," (p. 374). And see *per* POLLOCK, L.C.B., in *Dickinson* v. *Grand Junction Canal Co.* (1852), 7 Ex. 282. In *Ewart* v. *Belfast Poor Law Guardians* (1881), 9 L. R. Ir. 172, the defendants, a sanitary authority, made borings upon certain lands, and thereby obtained a copious underground flow of water. The judges assumed that the water tapped was water flowing in a defined underground channel, but held that it was not also "known," and, therefore, that it was not protected. FITZGIBBON, L.J. (in whose judgment Lord O'HAGAN, L.C., concurred) said: "I assume, . . . that the water did flow underground for some distance at least in a definite, that is, a contracted and bounded channel and stream, but its course was unknown, invisible, and undefined by human knowledge." The judgment was therefore in favour of the guardians. In *Black* v. *Ballymena Township Commissioners* (1886), 17 L. R. Ir. 459, Vice-Chancellor CHATTERTON held on the evidence that there was a defined subterranean channel, and also that it was "known." On the question of what is to be considered a "known" channel, he observed: "The question of fact to be determined in such cases is, whether the water appearing at a given point and then becoming a surface stream comes from subterranean percolation or oozing, or flows in a defined channel or watercourse underground to the point where it so appears; and for the decision of that question it lies on the party asserting his right to the flow to show affirmatively, not as a matter of fact, but as a reasonable inference from known facts, that the water comes to the place of emergence, not by percolation or oozing, but in a defined channel. Beyond this I do not think proof of knowledge can be required without destroying the claim of right to the flow of underground streams altogether."

In *Bradford Corporation* v. *Ferrand* [1902] 2 Ch. 655, FARWELL, J., reviewing the cases, held that no right exists in underground water where the course of the channel, though defined, is unknown.

What is a stream.

"A subterraneous flow of water may in some circumstances possess the very same characteristics as a body of water running on the surface; but, in my opinion, water whether falling from the sky or escaping from a spring which does not flow onward with any continuity of parts, but becomes dissipated in the earth's strata and simply percolates through or along those strata until it issues from them at a lower level through dislocation of the strata or otherwise, cannot with any propriety be described as a stream": *per* Lord WATSON in *McNab* v. *Robertson*, [1897] A. C. 129. In this case, a lessor demised by lease a distillery "together with the right to the water in the said ponds and in the streams leading thereto." The House of Lords (Lord HALSBURY, L.C., dissenting), held that water percolating through the ground towards the pond was not water in any stream leading to the pond. *Cf.* the judgment of POLLOCK, L.C.B., in *Dickinson* v. *Grand Junction Canal Co.* (1852), 7 Ex., at p. 304, and see *Whitehead* v. *Parks* (1858), 2 H. & N. 870.

Springs and steams.

In *Taylor* v. *St. Helens Corporation* (1877) 6 Ch. D. 264, which turned upon the construction of a grant of "streams and springs of water," JESSEL, M.R., said: "Now what are springs and streams? A spring of water, both in law and ordinary language, is, as I understand it, a definite source of water. When we talk of a spring of water, we mean a source of water of a definite, or nearly definite area, the word 'spring' coming from the water springing or bubbling up. It may be an underground spring which supplies a well, and we say that water 'wells up.' It may be an ordinary spring from which a small stream or rivulet runs above the ground. But those are definite things. A spring of water means a natural source of water of a definite and well-marked extent. So that there being springs of water on the land to which this would refer, it appears to me he grants those springs. Then, as regards streams of water, that again is a technical term. A stream of water, in law, is water which runs in a defined course, so as to be capable of diversion; and it has been held, that the term does not include the percolation of water below ground." By the South Shields Waterworks Act, 1788, a company were authorised to enter upon lands within the manor of Westow, and to dig and search for any spring of water, and to convey the water from such springs into South Shields for the use of the inhabitants of the town and the shipping in the harbour. The Act also provided that the company should not take the water from any spring, streams or ponds, so as to deprive the occupiers of the lands of water for their own necessary uses and for the cattle depasturing therein. The company had power to lay down pipes, and the inhabitants, with the consent of the company, might obtain the water by pipes, to communicate with the company's pipes, at certain charges, according to the bore of the pipes:—*Held*, that the owners or occupiers of lands within the manor were not prevented by the Act from sinking wells in such lands, though the effect might be to draw off the water from the company's springs (*South Shields Waterworks Co.* v. *Cookson* (1845), 15 L. J. Ex. 315).

Fouling neighbouring wells.

Notwithstanding the principles settled in the case of *Chasemore* v. *Richards*, it has been held that the owner of a well is entitled to an injunction to restrain his neighbour from so using a cesspool on his land as thereby to pollute the water in the well (*Womersley* v. *Church* (1867), 17 L. T. (N.S.) 190). It was contended for the defendant in this case, that the well was supplied by water percolating through the earth and not flowing through any defined channel, and that the plaintiff had no title to the water until it actually entered his well, and then only in the condition in which it was when it arrived. Lord ROMILLY, M.R., however, granted the injunction with costs. In a subsequent case it appeared that the plaintiff and the defendant were neighbouring landowners, and had each a deep well on his land. The distance between the wells was ninety-nine yards, and the plaintiff's land was at a lower level than the defendant's. The defendant turned sewage from his house into his well, and thus, as was alleged, polluted the water that percolated underground from the defendant's to the plaintiff's land, and, consequently, the water which came into the plaintiff's well from such percolating water, when he used his well by pumping, came adulterated with the sewage from the defendant's well. Is was held, reversing the decision of PEARSON, J., that the plaintiff had a good right of action against the defendant for so polluting the source of supply, although until the plaintiff had appropriated it he had no property in the percolating water under his land, and although he appropriated such water by the artificial means of pumping (*Ballard* v. *Tomlinson* (1885), 29 Ch. D. 115). LINDLEY, L.J., in the course of his judgment, said: "If a man chooses to put filth on his land, he must take care not to let it escape on to his neighbour's land (*Tenant* v. *Goldwin* (1704), 1 Salk. 21, 360); and not to let it poison the air which reaches it. Comyn's Dig. (Action on the Case for Nuisance, A.). So if a man chooses to poison his own well he must take care not to poison waters which other persons have a right to use as much as himself. To hold the contrary, on the ground that the water is not their property until they get it, and that it is poisoned before they get it, is to take an inadequate view of the subject, and to overlook the fact that the law of nuisance is not based exclusively on rights of property. Light is not property, and yet if a man has a right to have it come to his windows, he can maintain an action against those who prevent it from so coming. So air is not property, but a man who poisons the air which another has a right to breathe commits an actionable wrong." The learned judge then, after referring to *Womersley* v. *Church*, *supra*; *Hodgkinson* v. *Ennor*, *ante*, p. 412; and *Laing* v. *Whaley*, *ante*, p. 412, continued: "These decisions show that *primâ facie* one man has no right to foul water which another has a right to get; and if he has a right to get it, the fact that by pumping he draws it partly from the defendant's land is immaterial" (pp. 126, 127). See also *Pennington* v. *Brinsop Hall Coal Co.* (1877), 5 Ch. D. 769; and *King* v. *Oxford Co-operative Society* (1884), 51 L. T. 94, where paraffin oil leaked from barrels stored on the defendant's premises and found its way into the plaintiff's well.

Question of right of

The Court of Exchequer decided that there was no right to support by underground water at common law. Accordingly, where the defendants

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had made excavations to a great depth for the purposes of a foundation on wet and spongy land, and thereby let down certain cottages of the plaintiff built two years previously on adjoining land of the same character, it was held there was no cause of action (*Popplewell* v. *Hodkinson* (1869), L. R. 4 Ex. 248). In the earlier case of *Elliot* v. *N. E. Rail. Co.* (1863), 10 H. L. Cas. 333, it had been decided that a railway company which had purchased a piece of land for the construction of their line and a railway bridge, were not entitled to the additional support furnished by the water in a drowned mine. An electric lighting company erected a large central station near to the plaintiff's house, and for that purpose excavated from twenty-five to thirty feet below the surface. The plaintiff complained of vibration, subsidence, and consequent cracks in his house. The defendants contended that, if there had been subsidence, it was due to the abstraction of underground percolating water, and that there was no right to the support of such water. Upon that point, KEKEWICH, J. (distinguishing *Popplewell* v. *Hodkinson*), decided that, as there had been twenty years' enjoyment of such support, it was "a case of a statutory right by a prescription equivalent to grant." In the result, he decided that what the defendants had done amounted to a nuisance at common law, but he refused an injunction, thus leaving the plaintiff to his claim for damages. The case ultimately went to the Court of Appeal, and there the sole question was whether or not there should be an injunction, and that was granted. Nothing turned on the question of right to support (*Shelfer* v. *City of London Electric Lighting Co.*, and *Meux's Brewery Co.* v. *City of London Electric Lighting Co.*, [1895] 1 Ch. 287. A gas company in pursuance of their statutory powers proceeded to excavate certain land for the purpose of erecting a gasometer. In doing so, they withdrew underground percolating water from neighbouring land, and along with the water running silt or sand, and thereby caused neighbouring buildings to subside. The Court of Appeal decided that this constituted a nuisance within the meaning of the Gasworks Clauses Acts, 1847 and 1871 (*Jordeson* v. *Sutton, Southcoates and Drypool Gas Co.*, [1899] 2 Ch. 217). In the above case, the proportion of water to silt or sand varied, according to different witnesses, from one-tenth of water to nine-tenths of silt or from one-fifth of water to four-fifths of silt; all the witnesses agreeing that the silt always greatly preponderated over the water. This case was taken by appeal to the House of Lords. After it had been there argued for some days, the parties came to terms. See Jl. of G. L., February 27th, 1900, p. 545, and May 15th, 1900, p. 1318. A decision to the same effect had been given three years earlier in the Supreme Court of Massachusetts (*Cabot* v. *Kingman* (1896), 166 Mass. Rep. 403). In another case where silt was abstracted along with water pumped, and the foundation of the plaintiff's house was injured, it was held that he was entitled to recover compensation (*Fletcher* v. *Birkenhead Corporation*, [1907] 1 K. B. 205. See the facts more fully stated, *ante*, p. 384. See also *Trinidad Asphalt Co.* v. *Ambard*, [1899] A. C. 594, a case relating to a certain stratum of asphalt or pitch near the surface of land. The case of *Popplewell* v. *Hodkinson* was much discussed in the case of *Jordeson;* and much doubt was suggested by the judges of the Court of Appeal as to its extent. In the first place, the whole question whether there is any right of support from underground percolating water is left entirely open for reconsideration, and in the next place, the further question was left open whether such a right may not be acquired by grant express or implied, *i.e.*, by prescription under 2 & 3 Will. 4, c. 71, s. 3.

Each of the owners of two adjoining coal mines, neither being subject to any servitude to the other, has a right to work his own mine in the manner most convenient and beneficial to himself, although the natural consequence may be that some prejudice will accrue to the owner of the adjoining mine, so long as that does not arise from negligent or malicious conduct. The plaintiff and the defendant occupied adjoining collieries. A predecessor of the defendant, but with whom he had no privity, committed a trespass and made holes, called "thyrlings," in a barrier (of coal belonging to the plaintiff) which separated the two collieries. The defendant, in working his own mine, broke down a seam of coal of his own, and the consequence was that the water flowed from his mine into the plaintiff's mine

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through the "thyrlings." It was held that there was no duty incumbent on the defendant to prevent the water from flowing from his mine into the plaintiff's mine (*Smith* v. *Kenrick* (1849), 7 C. B. 515). The owner of the upper of two adjoining mines is not liable for injury by water flowing by gravitation into the lower mine from works conducted by him in the usual and proper manner for the purpose of getting mineral from any part of his mine; but he must not interfere with such gravitation so as to make it more injurious to the lower mine, or advantageous to himself; for if he do so, and be thereby an active agent in sending water to the lower mine, an action will lie against him by the owner of the lower mine for the injury it may occasion (*Baird* v. *Williamson* (1863), 16 C. B. (N.S.) 376).

Right to foul streams.

At common law, and apart from the effect of particular statutes, including the Rivers Pollution Prevention Act, 1876 (39 & 40 Vict. c. 75) (which will be hereafter separately considered), a right to foul or render impure a stream may be acquired by adverse user for twenty years, though no prescription will warrant a *public* nuisance (*R.* v. *Cross* (1812), 3 Camp. 224); but apart from prescription, no one in enjoyment of a stream is entitled to carry on any manufacture or business whereby the water flowing to his neighbour is rendered impure (Co. Litt. 200). Such a right, while it may be gained by user for twenty years, may also be lost by non-user for twenty years (*Mayor* v. *Chadwick* (1840), 11 A. & E. 571). Time will not begin to run until there has been an actionable invasion or infringement of a right, although it is not necessary that actual damages should have been sustained (Angel on Watercourses, sect. 219c).

Where a prescriptive right to foul a stream has been acquired, the fouling must not be considerably enlarged to the prejudice of other people. The fact that a stream is fouled by others is not a defence to a suit to restrain the fouling by one The mere suspension of the exercise of a prescriptive right is not sufficient to destroy the right, without some evidence of an intention to abandon it. Where dyeworks had not been used for more than twenty years, and had been allowed to go to ruin, it was held that any right of fouling a stream attaching to it had been lost (*Crossley* v. *Lightowler* (1867), L. R. 2 Ch. 478). The owner of land on the banks of a river can maintain a suit to restrain the fouling of the water of the river without showing that the fouling is actually injurious to him. The plaintiff, wishing to prevent the water of a river from being fouled by some dyeworks, purchased from the owners of the dyeworks a piece of land on the banks of the river, without communicating to them his object:—*Held*, that, in the absence of any express reservation by the owners of the dyeworks of the right of fouling the river, the plaintiff could maintain an action to restrain it (*ibid.*). See also *Traill* v. *McAllister* (1890), 25 L. R Ir. 524.

An easement to discharge polluted water from a paper mill into a stream extends to a new material used in the manufacture of paper, if the material is proper for the purpose, and does not increase the amount of pollution as against the servient tenement to any substantial or tangible degree (*Baxendale* v. *McMurray* (1867), L. R. 2 Ch. 790). From 1832 to 1877 the refuse of a fellmongery and the washings of dyes used in a coloured rug manufactory had been discharged into a watercourse, which was an arterial drainage work within the jurisdiction of drainage commissioners. In 1878 the fellmongery was abandoned, and the manufacture of leather boards substituted at the same factory. The pollution caused by the discharge of the refuse of the leather manufactory was less in degree than that caused by the fellmongery. The drainage commissioners convicted the owners of the leather board factory under a section of a local Act of polluting the stream, and this conviction was affirmed on appeal to the quarter sessions:—*Held*, that the conviction must be confirmed, for even if the factory-owners had a prescriptive right to foul the stream, it was as fellmongers, and not as leather board manufacturers; and that there was no authority for holding that the variation of the user, although it cast no increase, but even a less burden, on the servient tenement, enabled the factory-owners to substitute a business of a totally different kind to that originally carried on by them, and at the same time claim to maintain their original prescriptive right to pollute the watercourse

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even if such right did exist (*Clarke* v. *Somersetshire Drainage Commissioners* (1888), 57 L. J. M. C. 96).

A riparian proprietor who has a prescriptive right to take, in a particular way and at a particular place, water from a river, and to return such water to the river in a polluted condition, is not entitled to take the water in any other way or place, nor use even his common law right of taking it in such a way as to add to the pollution of the stream (*McIntyre Brothers* v. *McGavin*, [1893] A. C. 268). Where several manufacturers having their works upon a stream cause a nuisance to a riparian owner by discharging offensive matter into the stream, it is no answer to an action brought by the owner against one of those manufacturers for such manufacturer to say that the share he contributes to the nuisance is infinitesimal and unappreciable. The riparian owner is entitled to have the water in a pure condition, and has a right to take the manufacturers one by one and prevent each from discharging his contribution to that which becomes in the aggregate a nuisance (*Blair* v. *Deakin*, and *Eden* v. *Deakin* (1887), 57 L. T. 522; and see *Thorpe* v. *Brumfitt* (1873), L. R. 8 Ch. 650, and *Lambton* v. *Mellish*, [1894] 3 Ch. 163). Where an injury has been done to the private rights of a person, whether tenant or landlord, that person is entitled to damages, although only nominal, and where in such a case an injury is apprehended, an injunction will be granted as against the party in default. In an action by N., tenant of a certain farm, for damages, and an injunction against T., a sanitary authority, for polluting the plaintiff's stream:—*Held*, that the plaintiff's private right having been injured, he was entitled to nominal damages, and an injunction against T., although T. had only polluted the stream in conjunction with others (*Nixon* v. *Tynemouth Rural Sanitary Authority* (1888), 52 J. P. 504). The 14 Geo. 3, c. 96, which was passed for making and keeping navigable the rivers Aire and Calder, enacted that, "If any person or persons shall wilfully throw any soil . . . into any part of the said rivers . . . or of any drains, trenches, or watercourses thereunto belonging, every such person shall for every such offence forfeit" a sum of money. The appellant was a tanner, having premises on a small natural stream at a point about four miles from one of the rivers, into which it flowed at a place where that river was navigable. In the course of his business he discharged refuse from his works into the natural stream. He was convicted by a stipendiary magistrate of an offence against the foregoing enactment:—*Held*, that the words, "drains, trenches, or watercourses thereunto belonging," applied only to artificial streams made for the purpose of improving the navigation of the rivers, and did not apply to natural streams, and therefore that the conviction was wrong. *Held*, also (*per* BRAMWELL, B.), that inasmuch as the appellant discharged the refuse in the course of his business, he did not "wilfully" throw it into the stream within the meaning of the statute (*Smith* v. *Barnham* (1876), 1 Ex. D. 419).

In *Wood* v. *Sutcliffe* (1851), 21 L. J. Ch. 253, it appeared that the plaintiff had occupied for many years a manufactory for worsted spinning on a stream, and claimed a right of having the water come to his works in a pure state. The defendant erected dyeworks on the same stream, by which the water was polluted. The plaintiff brought an action against the defendant, and recovered a farthing damages, and now applied for an injunction to restrain the defendant from a continuous infringement of his rights. It was held, that a person may, by long user, acquire a right to the water of a stream free from pollution, though he may have no proprietorship in the stream, and may acquire a right to pour polluted matter into a stream as against all new-comers; that a person having established his right at law is not, as a matter of course, entitled to an injunction, particularly where the injunction would not restore the plaintiff to the right he has established, and where the act complained of may be compensated by pecuniary damages; that in this case the evidence proved that, owing to the increase of polluting matter poured into the stream from other sources than that of the defendant's works, the plaintiff never could be reinstated in his original rights; that the damage might be compensated by money; and that the plaintiff had been guilty of such an amount of acquiescence as would disentitle him to an

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injunction. See further, *Attorney-General* v. *Proprietors of the Bradford Canal* (1866), L. R. 2 Eq. 71.

There can be no prescriptive right to pollute a stream by the discharge of sewage in such a manner and to such an extent as to be injurious to public health (*Blackburn* v. *Somers* (1879), 5 L. R. Ir. 1; *cf. R.* v. *Cross*, *ante*, p. 423). See further on this subject *Attorney-General* v. *Barnsley Corporation*, [1874] W. N. 37, which was an information and bill on behalf of owners and occupiers of lands on the banks of the river Dearne for an injunction to restrain the corporation of Barnsley from discharging sewage into the river. The defence was that the defendants had acquired a right to foul the stream. The Lords Justices held that there could be no prescriptive right to justify a public nuisance.

In *The Duke of Buccleuch* v. *Cowan* (1876), 5 Ct. of Sess. Cas. (3rd ser.) 214, it was held that "An upper proprietor is not entitled to throw impurities, and especially artificial impurities, into a stream, so as to pollute the water as it passes through the estate of a lower proprietor; that the lower proprietor is entitled to complain of such pollution as renders the water unfit for primary purposes; but that it will be a good defence against such a complaint that the stream has been for time immemorial devoted to secondary purposes, such as manufactories, so as to supersede and abrogate the primary purposes." See report of the case in the House of Lords, 2 App. Cas. 344. In the later case of *Caledonian Rail. Co.* v. *Baird & Co.* (1876), 3 Ct. of Sess. Cas (4th ser,) 839, a proprietor erected a village for the accommodation of miners in his employment on the banks of a stream formerly suitable for primary purposes. Drains were provided to carry off surface water and water from washing-houses through filtering-beds into the stream, other arrangements being made by the proprietor for the removal of excreta and refuse from the miners' cottages, which if attended to by the inhabitants would have prevented such polluting matters from reaching the stream:—*Held*, that, pollution of the stream by the drains being proved, unless the pollution was stopped the pursuer would be entitled to have his rights protected by interdict.

In various public Acts stringent provisions are to be found to prevent the fouling of water. The Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), provides for severe penalties and for daily penalties during the continuance of the offence (ss. 21—28). See *ante*, pp. 191—197. In like manner s. 61 of the Act in the text enacts penalties for causing the water of the undertakers to be fouled in any of the ways therein specified, and by ss. 62—67, heavy penalties are imposed for permitting substances produced in the manufacture of gas to flow into the undertakers' works, and provision is made for a daily penalty during the continuance of the offence. See further the other Acts and cases, cited *ante*, p. 192. By the Waterworks Clauses Act, 1863 (26 & 27 Vict. c. 93), power is given to the undertakers to cut off the supply of water to consumers in case of waste, misuse, undue consumption, or contamination of the water, and penalties are also imposed (ss. 16 and 17). See *post*, p. 541.

Nothing in the Public Health Act, 1875 (38 & 39 Vict. c. 55), warrants any local authority in sending sewage into a river to the prejudice of parties having established interests in the water, or so as to create a public nuisance. Section 17 of that Act enacts that—

> "Nothing in this Act shall authorise any local authority to make or use any sewer drain or outfall for the purpose of conveying sewage or filthy water into any natural stream or watercourse, or into any canal pond or lake until such sewage or filthy water is freed from all excrementitious or other foul or noxious matter such as would affect or deteriorate the purity and quality of the water in such stream or watercourse or in such canal pond or lake."

In *Attorney-General* v. *Birmingham, &c. Drainage Board*, [1910] 1 Ch. 48, it was held that the prohibition contained in this section is against conveying such sewage or filthy water as will prejudicially affect the purity of a stream, and that therefore where sewage or other filthy water is conveyed into an

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already polluted stream, no offence is committed against the section unless the stream is thereby made fouler than it was before.

By s. 332 of the same Act, it is also provided that—

> "Nothing in this Act shall be construed to authorise any local authority to injuriously affect any reservoir canal river or stream or the feeders thereof or the supply quality or fall of water contained in any reservoir canal river stream or in the feeders thereof, in cases where any body of persons or person would, if this Act had not passed, have been entitled by law to prevent or be relieved against the injuriously affecting such reservoir canal river stream feeders or such supply quality or fall of water, unless the local authority first obtained the consent in writing of the body of persons or person so entitled as aforesaid."

Actions to prevent the fouling of streams.

The Public Health (Scotland) Act, 1897 (60 & 61 Vict. c. 38), s. 189, provides that nothing in that Act shall enable any local authority or other person to injuriously affect the supply of water required for the purposes of any waterworks established by or under the provisions of any Act of Parliament, or of the compensation water required to be given by the owners of such waterworks, unless the local authority shall have previously obtained the consent of such owners.

The cases are numerous in which legal proceedings have successfully been taken against local authorities to prevent the discharge of sewage or other noxious matter into streams. The following are some of the more important cases on this subject: *Oldaker* v. *Hunt* (1854), 6 De G. M. & G. 376; *Bidder* v. *Croydon B. of H.* (1862), 6 L. T. (N.S.) 778; *Attorney-General* v. *Metropolitan B. of W.* (1863), 9 L. T. (N.S.) 139; *Attorney-General* v. *Luton L. B.* (1856), 2 Jur. (N.S.) 180; *M. S. & L. Rail. Co.* v. *Worksop L. B.* (1856), 23 Beav. 198; *Spokes* v. *Banbury L. B.* (1865), L. R. 1 Eq. 42; *Attorney-General* v. *Birmingham Corporation* (1858), 4 K. & J. 528; *Cator* v. *Lewisham B. of W.* (1864), 5 B. & S. 115; *R.* v. *Darlington* (1865), 6 B. & S. 562; *Goldsmid* v. *Tunbridge Wells Improvement Commissioners* (1866), L. R. 1 Ch. 349; *Attorney-General* v. *Leeds Corporation* (1870), L. R. 5 Ch. 583; *North Staffordshire Rail. Co.* v. *Tunstall* (1870), 39 L. J. Ch. 131; *Holt* v. *Rochdale Corporation* (1870), L. R. 10 Eq. 354; *Attorney-General* v. *Cockermouth L. B.* (1874), L. R. 18 Eq. 172; *Attorney-General* v. *Richmond* (1866), L. R. 2 Eq. 306; *Attorney-General* v. *Colney Hatch Lunatic Asylum* (1868), L. R. 4 Ch. 146; *Attorney-General* v. *Basingstoke Corporation* (1876), 45 L. J. Ch. 726; *Glossop* v. *Heston and Isleworth L. B.* (1879), 12 Ch. D. 102; *Attorney-General* v. *Dorking Union* (1882), 20 Ch. D. 595; *Attorney-General* v. *Acton L. B.* (1883), 22 Ch. D. 221; *Attorney-General* v. *Clerkenwell Vestry*, [1891] 3 Ch. 527; *Ogilvie* v. *Blything Union* (1892), 67 L. T. 18; *Moncrieffe* v. *Perth Police Commissioners* (1886), Ct. of Sess. Cas. 13 Rettie, 921; *Seafield* v. *Kemp* (1899), 1 F. 402; *Attorney-General* v. *Dorchester Corporation* (1906), 70 J. P. 281; *Harrington* (*Earl of*) v. *Derby Corporation*, [1905] 1 Ch. 205. See also the following cases under the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76); *Thames Conservators* v. *Port Sanitary Authority of Port of London*, [1894] 1 Q. B. 647, and *R.* v. *Mead*, [1894] 2 Q. B. 124.

Where a plaintiff has proved his right to an injunction against a nuisance or other injury, it is no part of the duty of the court to inquire in what way the defendant can best remove it. The plaintiff is entitled to an injunction at once, unless the removal of the injury is physically impossible; and it is the duty of the defendant to find his own way out of the difficulty, whatever inconvenience or expense it may put him to. In such a case a reference before the decree to an expert, as to the existence of the injury, or as to the best mode of removing it, is improper. Whether such a reference as to the best mode of removing the injury would be proper after the decree, *quære*. But when the difficulty of removing the injury is great, the court will suspend the operation of the injunction for a time, with liberty to the defendant to apply for an extension of time. An information was filed at the relation of a local board of health, praying for an injunction to restrain the visiting justices of a county lunatic asylum from allowing the sewage from the asylum to pollute a certain stream. The fact of the pollution of the stream existing, and its being attributable in part to the sewage of the asylum being proved, the court granted an injunction, but suspended its operation for three months to enable the defendants to make the necessary arrangements, with liberty to the defendants to apply for an extension of time (*Attorney-General* v. *Colney Hatch Lunatic Asylum* (1868), L. R. 4 Ch. 146). See also *per* FRY, J., in *Pennington* v. *Brinsop Hall Coal Co.* (1877), 5 Ch. D., at p. 774.

A perpetual injunction was granted to restrain a drainage board from discharging sewage into a river in contravention of s. 17 of the Public Health Act, 1875. The board appealed, but on the appeal they did not contest that the injunction was properly granted on the facts proved to exist at the date of the trial. They, however, obtained adjournments to enable them to complete works which they urged would prevent a contravention of the section. The works were completed at great cost, and an expert who had been appointed by the court, reported in favour of the board as to the sufficiency of the works. In these circumstances, it appearing that there was no longer any contravention of the section, and the board undertaking to use their best endeavours to prevent any future contravention, the court discharged the injunction, the board to pay the costs of the appeal (*Attorney-General* v. *Birmingham, Tame and Rea District Drainage Board*, [1910] 1 Ch. 48).

A decree was made in 1875 against the Corporation of Birmingham as the sanitary authority of Birmingham, granting a perpetual injunction to restrain them from allowing sewage to flow into a river so as to be injurious to health or a nuisance to the plaintiffs; but the injunction was suspended for five years to give the corporation an opportunity to execute certain works. After the expiration of that period the plaintiffs desired to enforce the injunction, but in the meantime, by a provisional order obtained under the provisions of s. 279 of the Public Health Act, the Birmingham, Tame and Rea District Drainage Board had been constituted as the sanitary authority of the district in the place of the corporation. The plaintiffs brought an action against the district board, claiming a declaration that they were entitled to the same benefit of the decree as against the defendants in the present action as if they had been defendants in the former suit. The defendants demurred :—*Held*, that the district board were not made by the Public Health Act subject to any liabilities of their predecessors except those attaching under the Act, and were, therefore, not bound by the decree against them; and that, there being no allegation of any nuisance committed by the district board, the plaintiffs had no cause of action, and that the demurrer must be allowed (*Attorney-General* v. *Birmingham, Tame and Rea Drainage Board* (1881), 17 Ch. D. 685)).

A public body was authorised by Act of Parliament to construct and maintain a system of sewers and drains, and was enabled by compulsory purchase to obtain the necessary lands for the erection of works in a specified spot for the purification of the sewage, and for the conveyance of effluent sewage-water along a specified course terminating in a specified spot. The public body was also prohibited from allowing the sewage to be discharged into a river until after it had been subjected to a process of purification prescribed by the Act :—*Held*, that so long as the public body complied with the requirements of the Act, they were not liable to an action for a nuisance in discharging the effluent sewage-water into the river at the authorised place (*Lee Conservancy Board* v. *Hertford Corporation* (1884), 48 J. P. 628).

Section 27 of the Public Health Act, 1875, empowers any local authority to construct works for the disposal of sewage, "provided that no nuisance be created." By a provisional order, confirmed by Act of Parliament, a local authority were required to carry out within a fixed time sewage disposal works approved by the Local Government Board, and in case of default these requirements were made enforceable in manner provided by s. 299 of the Public Health Act, 1875. The local authority accordingly constructed sewage works approved by the Local Government Board, and the works, though constructed without negligence, created both a public and a private nuisance. It was held that this order was only a direction to exercise the powers of s. 27 within a given time, and did not exempt the local authority from their

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obligation under that section not to create a nuisance, and an injunction was granted (*Attorney-General* v. *Dorchester Corporation* (1906), 70 J. P. 281; 94 L. T. 682).

For form of order restraining the pollution of a stream, see *Lingwood* v. *Stowmarket Co.* (1865), L. R. 1 Eq. 77, 336; *Attorney-General* v. *Borough of Birmingham* (1858), 4 K. & J. 528; see also *Wood* v. *High and Low Harrowgate Improvement Commissioners* (1874), 22 W. R. 763, where an injunction was granted at the instance of the occupiers of certain bleach works. See, further, Seton on Judgments.

In *Attorney-General* v. *Kingston-on-Thames Corporation* (1865), 34 L. J. Ch. 481, an information was instituted, at the relation of the Conservators of the river Thames, to restrain the corporation of Kingston-on-Thames from altering their drains so as to discharge a greatly increased quantity of sewage into the river. The court, considering upon the evidence that neither present nuisance nor probability of immediate prospective nuisance had been proved, dismissed the information without prejudice to future proceedings in the event of nuisance being subsequently occasioned.

In another case, *Attorney-General* v. *Gee* (1870), L. R. 10 Eq. 131, the injury proved being trifling, the court dismissed, with costs, a bill and information to restrain a local board from discharging sewage into a river. See further, the Rivers Pollution Prevention Act, 1876, *post*, p. 725, and *Harrington* (*Earl of*) v. *Derby Corporation*, [1905] 1 Ch. 205, cited, *post*, p. 730.

River conservators.

On the construction of a public Act passed in the reign of Henry VIII., whereby the corporation of the city of Exeter were empowered to remove obstructions to the navigation of the river Exe, paying compensation to the owners of the soil where the obstructions were situated, it was held, first, that this Act did not confer the conservancy of the river on the corporation; secondly, that it did not entitle the corporation to file a bill in equity to restrain the erection of a pier in the river; and, thirdly, that it did not confer any right or privilege on the corporation within the meaning of s. 14 of the General Pier and Harbour Act, 1861 (24 & 25 Vict. c. 45), so as to prevent the erection of a pier in the river without their consent being obtained (*Exeter Corporation* v. *Earl of Devon* (1870), L. R. 10 Eq. 232).

A railway company was restrained from taking a large quantity of water for the use of their station from a river under the control of conservators, credit being given to the evidence on their part that taking such water would impede the navigation, against the evidence on the part of the company that taking such water would produce no appreciable effect (*Attorney-General* v. *G. E. Rail. Co.* (1871), L. R. 6 Ch. 572). Lord HATHERLEY, L.C., said: "The conservators are the persons to be the judges of that damage. They have no personal interest at all in the matter. They have only their duty to discharge, and are to be so treated in any court before whom the case may come; unless the other side can show a manifest and palpable case of wilfulness in their desire to impede without doing any good to themselves."

By the Thames Conservancy Act, 1857 (20 & 21 Vict. c. cxlvii.), s. 53, the conservators appointed under that Act had a power to grant a licence to a riparian proprietor to make an embankment in front of his own land abutting on the river; but it was held that though such licence might be the owner's justification so far as the public right of navigation was concerned, it would not authorise a licensee, being a riparian owner, to embank in front of his own land so as injuriously to affect the land of another riparian owner. The right of navigating a tidal river is common to the subjects of the realm, but it may be connected with the right to the exclusive access to particular land on the bank of the river, and the latter is a private right to the enjoyment of the land, the invasion of which may form the ground for an action for damages or for an injunction. It came, therefore, within the operation of the saving clause (s. 179) of the Act. The right of a riparian owner to the use of the stream does not depend on the ownership of the soil of the stream. The power granted to the conservators under s. 53 of the Act was held to be qualified and restricted by the provisions of s. 179 (*Lyon* v. *Fishmongers' Co.* (1876), 1 App. Cas. 662). See now the Thames Conservancy Act, 1894 (57 & 58 Vict. c. clxxxvii.). A landing-stage having been built on the banks of the Thames, with the licence of the Thames Conservancy Board, and having caused as it was alleged the water in the plaintiff's mill-tail to be retarded and the course silted up, an injunction was granted (*Lawes* v. *Turner* (1892), 8 T. L. R. 584). As to the stamp duty payable on such licences, see *Thames Conservators* v. *Inland Revenue Commissioners* (1886), 18 Q. B. D. 279).

The defendants were an unpaid body of Trustees created by statute conservators of the Lee, an ancient navigable river, and were "authorised and empowered from time to time at their discretion to cleanse, scour, deepen, enlarge or straighten the channel or course of the said river, and also to set out, open, make, and maintain" certain new cuts or canals thereinafter specified, to communicate with the river and to be used for the navigation, "and also to remove all obstructions and impediments whatsoever to the said navigation." The defendants were also by statute empowered to levy rates or tolls for the use of certain locks and artificial cuts, but were expressly forbidden to receive any toll in respect of such part of the navigation as lay between Bow creek and Old Ford lock, which part of the navigation was an ancient highway, and was by statute declared to be for ever free from toll. The plaintiff's barge, while navigating a part of the river between Bow creek and Old Ford lock struck upon one of several submerged piles, and was injured. The plaintiffs having brought an action for damages, the jury found that the piles were dangerous; that the defendants ought to have been aware of the danger, and had neglected their duty:—*Held*, by POLLOCK, B., that the action could not be maintained, since the defendants were unpaid trustees appointed for public purposes in aid of the common law right of navigating an ancient highway, and the duty of removing obstructions imposed by the statute was discretionary and not compulsory (*Forbes* v. *Lee Conservancy Board* (1879), 4 Ex. D. 116). See *Cracknell* v. *Thetford Corporation* (1869), L. R. 4 C. P. 629.

Amongst other powers granted by their Acts to the Lee Conservancy Board, they had full powers to do what was necessary for carrying into effect the object of their Acts, including powers to purchase land and levy tolls. The conservators executed the powers of the Acts so far as related to the improvement of the river navigation, and the making of towing paths, and they levied tolls. There was no evidence that they had actually purchased any of the land that lay along the course of the navigation, and had been used to form the towing paths:—*Held*, that, as the Acts might be carried into effect without purchasing, the burden of proof lay on the conservators to show that they had purchased; and since they had failed to show it, they were not entitled to be treated as owners of the soil of the towing paths, though they were entitled to an injunction to prevent any owner of adjoining land from so using the towing paths as to obstruct in any way, their free use for the purposes of the navigation (*Lee Conservancy Board* v. *Button* (1881), 6 App. Cas. 685).

See also *Thames Conservators* v. *Port Sanitary Authority of Port of London*, [1894] 1 Q. B. 647. As to the taking of gravel by a riparian owner from the Thames, between high and low water mark, see *Thames Conservators* v. *Smeed*, [1897] 2 Q. B. 334. In this case a definition is given of the phrase, "bed of a river," and an earlier case of *Pearce* v. *Bunting*, [1896] 2 Q. B. 360, is disapproved of. See also *Attorney-General for Dominion of Canada* v. *Attorneys-General for the Provinces of Ontario, Quebec, and Nova Scotia*, [1898] A. C. 700; and *Great Torrington Commons Conservators* v. *Moore Stevens*, [1904] 1 Ch. 347.

The Thames Conservators have no power under the Thames Conservancy Act, 1894, to grant a licence to dredge the upper Thames upon the terms that the licensee may sell the soil so raised for his own benefit (*Palmer* v. *Thames Conservators*, [1902] 1 Ch. 163). It has been held that in exercising their powers of dredging the conservators must do so subject to the statutory rights of the owners of the Thames Tunnel. They were restrained from

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carrying out any dredging works likely to endanger the tunnel (*East London Rail. Co.* v. *Thames Conservators* (1904), 68 J. P. 302). See also as to the duty of the conservators to keep the river free from obstructions to navigation, *Queens of the River Steamship Co., Ltd.* v. *Easton, Gibb & Co. and Thames Conservators* (1907), 96 L. T. 901.

Notice of action.

Where a stream was being polluted by a public authority, and the remedy sought was not damages, but the summary remedy by injunction, the courts would not refuse the summary remedy on the ground that the formality of notice of action had not been given, though prescribed by statute, *e.g.*, the Metropolis Management Acts, and the Public Health Act, 1875 (*Attorney-General* v. *Hackney L. B.* (1875), L. R. 20 Eq. 626). This decision was followed in *Flower* v. *Low Leyton L. B.* (1877), 5 Ch. D. 347; and in *Bateman* v. *Poplar L. B.* (1886), 33 Ch. D. 360. See now the Public Authorities Protection Act, 1893, *post*, p. 1062.

Where an action against a sanitary authority was *bonâ fide* and in substance brought for an injunction to prevent them from causing a nuisance in the future by continuing to discharge sewage into a stream, but the judge at the trial thought that under the circumstances an injunction was not then needed, because, though a nuisance was caused by such discharge of sewage in an exceptionally dry season (which at the time of the trial had passed away), it was not likely to recur except in such a season, and he accordingly refused an injunction, but gave £25 damages; the Court of Appeal held that he had power to give such damages in substitution for an injunction, in accordance with the Chancery practice under Lord Cairns' Act, though no notice of action had been given as required by s. 264 of the Public Health Act, 1875 (*Chapman* v. *Auckland Union* (1889), 23 Q. B. D. 294).

As to right to support for canals see *Dudley Canal Co.* v. *Grazebrook* (1830), 1 B. & Ad. 59; *Cromford Canal Co.* v. *Cutts* (1848), 5 Rail. Cas. 442; *Birmingham Canal Co.* v. *Cartwright* (1879), 11 Ch. D. 421; *Midland Rail. Co.* v. *Checkley* (1867, L. R. 4 Eq. 19; *M. S. & L. Rail. Co.* v. *Johnson*, 36 Ch. D. 629 n; *L. & N. W. Rail. Co.* v. *Evans*, [1893] 1 Ch. 16; *Knowles* v. *L. & Y. Rail Co.* (1889), 14 App. Cas. 248; *Chamber Colliery Co., Ltd.* v. *Rochdale Canal Proprietors*, [1895] A. C. 564; *New Moss Colliery Co.* v. *M. S. & L. Rail. Co.*, [1897] 1 Ch. 725; *Glamorganshire Canal Co.* v. *Nixon's Navigation Co.* (1901), 85 L. T. 53; *N. British Rail. Co.* v. *Turner's, Ltd* (1904), 41 S. L. R. 706. Much turns on the particular provisions of the special Acts, but in the absence of special provisions the canal company are entitled to subjacent and adjacent support. The Canals Protection (London) Act, 1898 (61 & 62 Vict. c. 16), gives to local authorities powers to ensure the fencing, etc., of dangerous places on the banks or towing paths thereof. For a case turning on the meaning of "waste water" in the private Acts of a canal company, see *Manchester Ship Canal Co.* v. *Rochdale Canal Co.* (1899), 81 L. T. 472; in H. L., *sub nom. Rochdale Canal Co.* v. *Manchester Ship Canal Co.* (1902), 85 L. T. 585. For a case relating to the liability to repair the approaches to an overbridge and the fences, and which turned upon the construction of special Acts, see *Attorney-General* v. *Oxford Canal Navigation* (1903), 72 L. J. Ch. 285. The undertakers of a canal navigation were, under a special Act of William IV., required to afford a supply of water for condensing and other purposes to steam engines in connection with manufactories within 200 yards of the canal. It was held that a generating station was not a "manufactory" within the meaning of this enactment (*Birmingham Corporation* v. *Birmingham Canal Navigation* (1905), 21 T. L. R. 548).

Foreshore.

As to immemorial user of the foreshore in tidal and navigable waters by the owners of fishing boats and other craft, by fixing moorings in the soil for the purpose of attaching their boats to them, see *Attorney-General* v. *Wright*, [1897] 2 Q. B. 318. See also *Original Hartlepool Collieries Co.* v. *Gibb*, cited *ante*, *p.* 414. As to injury by pollution caused to oyster storage beds on the foreshore and along the channel of a tidal creek, see *Foster* v. *Warblington U. D. C.*, [1906] 1 K. B. 648, and *Hobart* v. *Southend-on-Sea Corporation* (1906), 75 L. J. K. B. 305; *Owen* v. *Faversham Corporation* (1909), 73 J. P. 33. As to digging and taking away shingle, see *Anderson* v. *Jacobs*

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1905), 93 L. T. 17; *Burton* v. *Hudson*, [1909] 2 K. B. 564. As to when moorings in river beds are permanent occupations of the soil so as to be rateable to the poor rate, see *Watkins* v. *Milton-next-Gravesend Overseers* (1868), L. R. 3 Q. B. 350; *Grant* v. *Oxford L. B.* (1868), L. R. 4 Q. B. 9; *Cory* v. *Greenwich Churchwardens* (1872), L. R. 7 C. P. 499; and *Cory* v. *Bristow* (1877), 2 App. Cas. 262.

Larceny of water.

Water supplied by a water company to a consumer, and standing in his pipes, may be the subject of a larceny at common law (*Ferens* v. *O'Brien* (1883), 11 Q. B. D. 21). As to gas, see *ante*, p. 190.

For actions brought to recover penalties and damages for not sending compensation water, see *Lewis* v. *Swansea Corporation* (1888), 4 T. L. R. 122, 706; and *Beaumont* v. *Huddersfield Corporation* (1902), 67 J. P. 57; both of which cases are referred to fully in the INTRODUCTION, p. 80. See also as to the powers of justices on proceedings being taken to enforce a penalty clause, *Davies-Cooke* v. *Hawarden and District Waterworks Co.* (1907), 71 J. P. 223.

A local board, under cover of legislative powers, cannot make a sewer which will have the effect of polluting the water of a canal. It was held, therefore, that the board must be restrained from permitting sewage communications to be made between the adjoining houses and the main sewer so long as it should discharge itself into the canal (*M. S. & L. Rail. Co.* v. *Worksop B. of H.* (1856), 23 Beav. 198).

A water company having acquired a long lease of a piece of land, with the intention of making a reservoir, afterwards let the same to be used as a rubbish shoot, whereby the surface was raised ten feet. This was held to be "waste," and an injunction was granted (*West Ham Central Charity Board* v. *East London Waterworks Co.*, [1900] 1 Ch. 624).

Errors and omissions in plans, etc., may be corrected by justices, etc., who shall certify the same.

7. If any omission, mis-statement, or wrong description shall have been made of any lands or streams, or of the owners, lessees or occupiers of any lands or streams, described on the plans or books of reference deposited in compliance with the standing orders of either House of Parliament, or in the schedule to the special Act, the undertakers, after giving ten days notice to the owners, lessees, and occupiers of the lands and streams affected by such proposed correction, may apply in England or Ireland to two justices, and in Scotland to the sheriff, for the correction thereof; and if it appear to such justices or sheriff that such omission, mis-statement, or wrong description arose from mistake, they or he shall certify the same accordingly, and shall in such certificate state the particulars of any such omission, mis-statement, or wrong description; and such certificate, with the other documents to which it relates, shall be deposited in England or Ireland with the clerk of the peace, and in Scotland with the sheriff clerk of the several counties in which the lands or streams affected thereby are situated, or, where any such lands or streams are situated in a royal burgh in Scotland, with the town clerk of such burgh; and such certificate shall be kept by such clerks of the peace, sheriff clerks, or town clerks respectively with the other documents to which they relate; and thereupon such plan book of reference, or schedule shall be deemed to be corrected according to such certificate, and the undertakers may make the works in accordance with such certificate, as if such omission, mis-statement, or wrong description had not been made.

Certificate, etc., to be deposited.

It was decided in *Kemp* v. *West of London and Crystal Palace Rail. Co.* (1855), 1 K. & J. 681, that the corresponding section in the Railways Clauses

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Act was intended to meet the case of any omission of land in the plan, or of description of any owner of it in the books of reference, or the omission of the number or the mis-statement of the acreage or a mistake in the name of the owners, etc., as from an error in copying or the like. In that case the promoters of a proposed railway about to pass through land held by the plaintiffs on a long lease from the freeholder, and by them sublet to an occupying tenant, described it in their book of reference, naming the freeholder as owner and the sub-lessee as occupier, omitting all mention of the plaintiffs, the lessees. The special Act was passed incorporating all the Consolidation Acts of 1845, the plaintiffs not appearing before the committee, and having in fact no notice of the proceedings in Parliament. The lands were afterwards taken by proceedings under the compulsory clauses of the Lands Clauses Act—the plaintiffs not being summoned. The time for exercising the special powers elapsed before the plaintiffs were applied to. WOOD, V.-C., refused to grant an injunction to prevent the railway company from entering on the land. On this subject, see also *Taylor* v. *Clemson* (1844), 11 Cl. & F. 610. If the justices are satisfied that the omission, etc., arose from mistake, it is their duty to grant the necessary certificate; and they may be compelled to do so by *mandamus* (*Ex parte Central Wales Rail. Co.*, Mich. T., 1864, noted in Hodges on Railways, 7th ed., vol. 1, p. 339).

Works not to be proceeded with until plans of all alterations authorised by Parliament have been deposited.

8. The undertakers shall not begin to execute the waterworks unless they shall have previously deposited with the clerk of the peace in England or Ireland, and the sheriff clerk in Scotland, of every county, and the town clerk of every royal burgh in Scotland, in which the waterworks shall be situated, a plan and section of all such alterations from the original plan and section (if any) as shall have been approved of by Parliament, on the same scale and containing the same particulars as the original plan and section of the waterworks, and shall also have deposited with the parish clerks of the several parishes in England, and the clerks of the unions of the several parishes in Ireland, and the schoolmasters of the several parishes in Scotland, in which such alterations shall have been authorised to be made, copies or extracts of or from such plans and sections as shall relate to such parishes respectively.

Upon the question whether the works of a water company are subject to local building Acts or byelaws, see the cases cited *ante*, p. 156.

Clerks of the peace, etc., to receive plans of alterations, etc., and allow inspection.

9. The said clerks of the peace, sheriff clerks, and town clerks, parish clerks, clerks of unions, and schoolmasters shall receive the said plans and sections of alterations, and copies and extracts thereof respectively, and shall keep the same, as well as the said original plans and sections, and shall allow all persons interested to inspect any of the documents aforesaid, and to make copies and extracts of and from the same, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of the original plans and sections by an Act passed in the first year of the reign of her Majesty, intituled "An Act to compel clerks of the peace for counties, and other persons, to take the custody of such documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament."

7 Will. 4 & 1 Vict. c. 83.

The Act here referred to may now be cited as the Parliamentary Documents Deposit Act, 1837 (Short Titles Act, 1896 (59 & 60 Vict. c. 14)). It provides that:

Clerks of the peace, etc., to

> "Whenever either of the Houses of Parliament shall, by its standing orders already made or hereafter to be made, require that any such

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maps, plans, sections, books, or writings, or extracts or copies of the same, or any of them, shall be deposited as aforesaid, such maps, plans, sections, books, writings, copies, and extracts shall be received by and shall remain with the clerks of the peace, sheriff clerks, parish clerks, schoolmasters, town clerks, postmasters, and other persons with whom the same shall be directed by such standing orders to be deposited, and they are hereby respectively directed to receive and to retain the custody of all such documents and writings so directed to be deposited with them respectively, in the manner, and for the purposes, and under the rules and regulations concerning the same respectively directed by such standing orders, and shall make such memorials and indorsements on and give such acknowledgments and receipts in respect of the same respectively as shall be thereby directed" (s. 1).

receive the documents herein mentioned, and retain them for the purposes directed by the Standing Orders of the Houses of Parliament.

"All persons interested shall have liberty to, and the said clerks of the peace, sheriff clerks, parish clerks, schoolmasters, town clerks, and postmasters, and every of them, are and is hereby required at all reasonable hours of the day, to permit all persons interested to inspect during a reasonable time, and make extracts from or copies of the said maps, plans, sections, books, writings, extracts and copies of or from the same, so deposited with them respectively, on payment by each person to the clerk of the peace, sheriff clerk, clerk of the parish, schoolmaster, town clerk or postmaster having the custody of any such map, plan, section, book, writing, extract or copy, one shilling for every such inspection, and the further sum of one shilling for every hour during which such inspection shall continue after the first hour, and after the rate of sixpence for every one hundred words copied therefrom" (s. 2).

Clerks of the peace, etc., to permit such documents to be inspected or copied by persons interested.

"In case any clerk of the peace, sheriff clerk, parish clerk, schoolmaster, town clerk, postmaster, or other person shall in any matter or thing refuse or neglect to comply with any of the provisions hereinbefore contained, every clerk of the peace, sheriff clerk, parish clerk, schoolmaster, town clerk, postmaster, or other person shall for every such offence forfeit and pay any sum not exceeding the sum of five pounds; and every such penalty shall, upon proof of the offence before any justice of the peace for the county within which such offence shall be committed, or by the confession of the party offending, or by the oath of any credible witness, be levied and recovered, together with the cost of the proceedings for the recovery thereof, by distress and sale of the goods and effects of the party offending, by warrant under the hand of such justice, which warrant such justice is hereby empowered to grant, and shall be paid to the person or persons making such complaint; and it shall be lawful for any such justice of the peace to whom any complaint shall be made of any offence committed against this Act, to summon the party complained of before him, and on such summons to hear and determine the matter of such complaint in a summary way, and on proof of the offence to convict the offender, and to adjudge him to pay the penalty or forfeiture incurred and to proceed to recover the same, although no information in writing or in print shall have been exhibited or taken by or before such justice; and all such proceedings by summons without information shall be as good, valid, and effectual to all intents and purposes as if an information in writing had been exhibited" (s. 3).

Clerks of the peace, etc., for every omission to comply with the provisions of this Act, liable to the penalty of £5, to be recovered in a summary way.

10. Copies of the said plans and books of reference, or of any alteration or correction thereof or extracts therefrom, certified by any such clerk of the peace, sheriff clerk, or town clerk, which certificate such clerk shall give to all parties interested, when required, shall be received in all courts of justice or elsewhere as evidence of the contents thereof.

Copies of plans and alterations, etc., to be evidence.

11. The undertakers in constructing the waterworks shall not deviate from the line of the works laid down in the said plan more than the

Not to deviate

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beyond limits defined upon plans, etc.

prescribed number of yards, and where no number of yards is prescribed not more than ten yards, nor in any case to any greater extent than the line of lateral deviation described in the said plans with respect to such works, nor take nor use, for the purpose of such deviation, the lands of any person not mentioned in the books of reference without his previous consent in writing, unless the name of such person shall have been omitted by mistake, and the fact that such omission happened from mistake shall have been certified in manner herein-before provided.

A section somewhat similar (except as to the extent of deviation) is contained in the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), s. 15. Under that section it has been decided that the forbidding a railway company to deviate more than 100 yards from the line delineated on their plans deposited, applies only to the line of railway itself, and does not prevent the company from taking for collateral purposes, land beyond the distance of 100 yards, and beyond the limits of deviation marked on the plans, provided such land be scheduled in the company's local Act, and included in their plans and books of reference (*Doe* d. *Armistead* v. *North Staffordshire Rail. Co.* (1851), 16 Q. B. 526). In measuring the 100 yards, the *medium filium viæ* of the line as made, and the line as shown on the plans, is to be taken as the commencement and termination respectively (*ibid.*). A like decision was come to in *Doe* d. *Payne* v. *Bristol and Exeter Rail. Co.* (1840), 6 M. & W. 320; and see *Crawford* v. *Chester and Holyhead Rail. Co.* (1847), 11 Jur. 917; *Dowling* v. *Pontypool, etc., Rail. Co.* (1874), L. R. 18 Eq. 714; *Finck* v. *L. & S. W. Rail. Co.* (1889), 44 Ch. D. 330; *Prothero* v. *Tottenham and Forest Gate Rail. Co.*, [1891] 3 Ch. 278; and *Cardiff Rail. Co.* v. *Taff Vale Rail Co.*, [1905] 2 Ch. 289.

An agreement was entered into between a landowner and a railway company that the former should not oppose a projected railway on condition that there should be reference to arbitration for, among other purposes, defining the line of approach to his premises from a turnpike road which it was proposed to divert. After the award indicating such approach had been made, it became expedient for the company further to divert the turnpike road, but within the limits of deviation, and consequently necessary to alter the line of the approach to the landowner's premises. It was held by Lord COTTENHAM, that the company were not precluded from making such alteration (*Wood* v. *North Staffordshire Rail. Co.* (1849), 1 Mac. & G. 278).

In *Holyoake* v. *Shrewsbury and Birmingham Rail. Co.* (1848), 5 Rail. Cas. 421, it appeared that a railway company had purchased a part of the plaintiff's land, the value of which was settled by arbitration. The company entered, and were proceeding to make their line in a manner which clearly exceeded their powers of vertical deviation. The plaintiff filed his bill, alleging injury, and praying an injunction. Vice-Chancellor WIGRAM held, that the plaintiff was entitled to an interim injunction, but ordered an action to be brought to try the legal right. On appeal the Lord Chancellor (Lord COTTENHAM) directed the action to be brought immediately, and the motion to stand over, holding that a plaintiff ought to satisfy the court that he has sustained substantial damage from the violation of a legal right, in order to entitle himself to an injunction.

Undue delay or acquiescence may deprive a landowner of the right to complain of unwarranted lateral deviation. See *per* the Lord Chancellor in *Holyoake* v. *Shrewsbury and Birmingham Rail. Co.*, *supra*, and *Hopkins* v. *G. N. Rail. Co.* (1848), 11 L. T. (o.s.) 306.

See further the notes to s. 12.

Undertakers subject to

12. Subject to the provisions and restrictions in this and the special Act, and any Act incorporated therewith, the undertakers may execute any of the following works for constructing the waterworks; (that is to say,)

provisions of this and the special Act, may execute the works herein named.

They may enter upon any lands and other places described on the said plans and in the said books of reference, and take levels of the same, and set out such parts thereof as they shall think necessary and dig and break up the soil of such lands, and trench and sough the same, and remove or use all earth, stone, mines minerals, trees, or other things dug or gotten out of the same:

They may from time to time sink such wells or shafts, and make, maintain, alter, or discontinue such reservoirs, waterworks, cisterns, tanks, aqueducts, drains, cuts, sluices, pipes, culverts, engines, and other works, and erect such buildings, upon the lands and streams authorised to be taken by them, as they shall think proper, for supplying the inhabitants of the town or district within the prescribed limits with water:

They may from time to time divert and impound the water from the streams mentioned for that purpose in the special Act, or the said plans or books of reference, and alter the course of any such streams not being navigable, and also take such waters as may be found in and under or on the lands to be taken for constructing the works:

Undertakers to make compensation for damages.

Provided always, that in the exercise of the said powers the undertakers shall do as little damage as can be, and in all cases where it can be done shall provide other watering places, drains, and channels for the use of adjoining lands, in place of any such as shall be taken away or interrupted by them, and shall make full compensation to all parties interested for all damage sustained by them through the exercise of such powers.

Section 12 provides for "full compensation to all parties interested for all damage sustained." See also s. 6, *ante*, p. 382, and the Lands Clauses Act, 1845. The cases on this subject will be found collected *ante*, pp. 383 *et seq.*

In *New River Co.* v. *Johnson*, cited on p. 418, the company, in the execution of certain works authorised by a local Act incorporating s. 12, *supra*, intercepted water, which would otherwise have percolated through the strata of earth into a well upon the premises of the respondent, and drained off water which had accumulated in the well. Upon a complaint before justices, in order to recover compensation for the damage sustained, the company were ordered to pay a sum of money and costs. It was held, on appeal, that the order was wrong, for that, inasmuch as no action would lie against the company in respect of either quantity of water, supposing no Act authorising the execution of the works had been passed, the claim for compensation could not be sustained.

As to accommodation works required by the special Act to be constructed, see s. 16, *post*, p. 441.

Notices given and plans and sections deposited in pursuance of the standing orders of the Houses of Parliament previous to an application for an Act are not to be regarded in construing that Act afterwards, unless they are so referred to as to be incorporated therewith (*N. B. Rail. Co.* v. *Tod* (1846), 12 Cl. & F. 722). In *Edinburgh Street Tramways Co.* v. *Black* (1873), L. R. 2 H. L. Sc. 336, the company were, by s. 5 of their Act, authorised "to make, form, lay

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down, and maintain the tramways hereinafter described in the lines, and according to the levels shown on the deposited plans and sections, and in all respects in accordance with those plans and sections." The House of Lords again decided that "where there is such a reference as this to the plans and sections in an Act of Parliament, they are to be held as incorporated into the Act." See *per* Lord WATSON, at p. 340. *Cf. Attorney-General* v. *G. E. Rail. Co.* (1873), L. R. 6 H. L. 367; and *Beardmer* v. *L. & N. W. Rail. Co.* (1849), 1 Mac. & G. 112. In *Huddersfield Corporation* v. *Jacomb* (1874), L. R. 10 Ch. 92, the corporation had served the usual notice on a landowner before applying to Parliament for power to take his land. The Act, when obtained, gave them power to take more of his land than was described in the notice. It was held that the corporation were not prevented from taking more land than was described in the notice. MELLISH, L.J., in giving judgment, observed: "It is now settled law that what was contained in the notice to the landowner as to the width which the conduit was to be cannot affect the corporation, even if it got into the deposited plans, unless it was contained in the Act of Parliament. It is quite clear that the Act does not contain any such restriction as to the actual width which the conduit is to have; and even if there was a restriction as to the width of the conduit, the corporation are not, in purchasing the lands, confined to the precise number of feet that may be taken up by the conduit. It may be convenient for them, with reference to their works, to have some feet of land on each side, and therefore upon the first point I think it is clear that they have not exceeded their powers." The corporation of Yarmouth were authorised by provisional order confirmed by Parliament to construct a pier according to certain deposited plans, which showed that the pier, when constructed, would be physically inconsistent with the existence of an alleged public right of access to the seashore. It was held that if the alleged right of way had ever existed it was extinguished by necessary implication (*Yarmouth Corporation* v. *Simmons* (1878), 10 Ch. D. 518. See also *Mackett* v. *Herne Bay Commissioners* (1878), 37 L. T. 812).

As to the meaning of the phrase "delineated upon the deposited plans," see *Dowling* v. *Pontypool Rail. Co.* (1874), L. R. 18 Eq. 714, and *Coats* v. *Caledonian Rail. Co.* (1903), 6 F. 1042. By an Act obtained by the Regent's Canal Company, they were empowered to make and maintain an enlargement of a certain reservoir in the lines and upon the lands delineated on the deposited plans and sections. It was held that the sections, as well as the plans, were incorporated in the Act and prescribed a vertical as well as a lateral limit within which the works were to be kept. The embankment having been raised to a height exceeding the authorised height, it was also held that, no injury having been occasioned to any individual, and there being none which was imminent or of irreparable consequence, a neighbouring landlord was not entitled to an injunction, but that the Attorney-General in such a case was so entitled (*Ware* v. *Regent's Canal Co.* (1858), 3 De G. & J. 212).

Where the promoters of a public undertaking have authority from Parliament to interfere with private property on certain terms, any person whose property is interfered with by virtue of that authority has a right to require that the promoters shall comply with the letter of the enactment so far as it makes provision on his behalf. Nor can any court remodel arrangements sanctioned, or relax conditions imposed, by Act of Parliament. Deviation, in its ordinary and natural sense, and as used in Acts of Parliament, means shifting the work in its integrity from one site to another which may be deemed more suitable. It does not imply a right not only to alter the situation of the work, but in doing so to dispense with a half or two-thirds of it. A local and personal Act empowered commissioners to take water from a river for the supply of a township on condition of their executing certain works, and (*inter alia*) a reservoir to supply compensation water to millowners, and a conduit, the reservoir to be constructed by an embankment across the river. The Act and the relative plans and sections described the position of the reservoir, its contour and capacity, and the height of the embankment, and provided that in constructing the authorised works the commissioners might, subject to the provisions of the Act, deviate from the lines of the works to any extent not exceeding the limits of lateral deviation shown on the deposited plans, and from the levels shown on the deposited sections, in the case of the reservoir, to any extent of lesser height which would enable the commissioners to give a sufficient supply of water for compensation purposes; but the commissioners should not, in the exercise of the power of lateral deviation thereby given, construct any embankment or wall of any reservoir of a greater height above the general surface of the ground than that shown on the plans with reference to the corresponding embankment or wall and six feet in addition. In constructing the reservoir, the commissioners curtailed it by more than one-third of its length, and nearly two-thirds of its capacity, and placed the embankment higher up the river than the point fixed by the Act, and so that the capacity could not be enlarged in the event of the supply of compensation water proving insufficient. In constructing the conduit the commissioners disregarded in material points the directions of the Act as to the course and serviceableness of the conduit, and constructed a conduit which they alleged was "a substantial equivalent" to the millowners. The millowners having brought an action against the commissioners, it was held, reversing the decision of the Irish Court of Appeal (27 L. R. Ir. 179), Lords MORRIS and HANNEN dissenting, that although no actual damage was proved, the millowners were entitled to a declaration that the reservoir and conduit were not in accordance with the provisions of the Act, and to an injunction restraining the commissioners from taking or using the waters of the river or from interfering with the flow of the river otherwise than as authorised by the Act (*Herron* v. *Rathmines and Rathgar Improvement Commissioners*, [1892] A. C. 498).

In the exercise of their statutory powers a water company sunk a shaft in land adjacent to the plaintiff's house, and for this purpose employed certain lift pumps, the noise of which seriously interfered with the plaintiff's comfort. The plaintiff having commenced an action for nuisance, the company substituted centrifugal pumps, which diminished the noise of the pumping. When the sinking of the shaft was commenced, it became necessary to lower and lengthen the pumps from time to time, but at the date when the centrifugal pumps were substituted, the sinking of the shaft had arrived at a point at which this operation had ceased to be necessary. The company might have used centrifugal pumps from the commencement, but they were less convenient on account of the difficulty of lowering and lengthening them, and on account of the increased labour attending their use, and they were not the pumps ordinarily used in sinking shafts:—*Held*, that the annoyance being temporary and for a lawful object did not amount to a nuisance at law:—*Held*, further, that the authority conferred on the company to sink the shaft included all things reasonably necessary for the execution of the work (*Harrison* v. *Southwark and Vauxhall Water Co.*, [1891] 2 Ch. 409). *Cf. Knight* v. *Isle of Wight Electric Light and Power Co.* (1904), 68 J. P. 266, and *Colwell* v. *St. Pancras Borough Council*, [1904] 1 Ch. 707. An act is not "necessary" within s. 16 of the Railways Clauses Consolidation Act, 1845, merely because it enables the company to execute their works more economically (*Fenwick* v. *East London Rail. Co.* (1875), L. R. 20 Eq. 544).

The Waterworks Clauses Act (s. 12) does not empower a company to execute any works which are not authorised by the special Act of such company. The South Staffordshire Waterworks Company, before applying to Parliament, deposited plans showing that a certain field would be affected by a tunnel passing forty-five feet below the service, and gave a notice to the owner accordingly. The company obtained its Act, authorising it to construct its works according to the plans, and afterwards proposed to take the field, sink a well, and erect pumping machinery thereon. It was held that the company were not authorised to take or use the field permanently for any other purpose than that indicated upon the deposited plans (*Simpson* v. *South Staffordshire Waterworks Co.* (1865), 34 L. J. Ch. 380. See remarks on this case by MALINS, V.-C., in *Corporation of Huddersfield* v. *Jacomb* (1874), L. R. 17 Eq. at p. 487; affirmed L. R. 10 Ch. 92).

A waterworks company were incorporated by a special Act, and empowered to take certain land, and to make and maintain in certain definite situations

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the waterworks mentioned in the Act for the purpose of supplying a definite area with water. In addition to the land above described, the company were also authorised to purchase by agreement a limited number of acres of land, which they might hold for the purposes of the Act, and the general purposes of the undertaking. The company had, under this later power, bought some additional land, and they proposed to sink wells and erect pumping stations on this additional land, which was situated some miles distant from the originally authorised works. An action was brought on the relation of several riparian owners on an adjoining river, and they claimed an injunction to restrain the water company from sinking wells and erecting pumping stations on the land so acquired on the ground that the proposed works were *ultra vires*. The company relied on the power to purchase and hold additional land for the purposes of the undertaking, and contended that they were entitled on their own lands to sink wells and draw off water just as any other landowner could do, and that as they proposed to do so for the purpose of supplying water they were acting wholly within their powers. It was held that the additional land could only be used for purposes ancillary to the main undertaking; that the undertaking which was authorised was that specifically described in the special Act; that it was only by means of these works that they could take, divert, store, and use water; and that the additional land could only be used for subsidiary works or conveniences to assist in carrying on the works specifically authorised (*Attorney-General* v. *Frimley and Farnborough District Water Co.*, [1908] 1 Ch. 727. See also *Marriott* v. *East Grinstead Gas and Water Co.*, [1909] 1 Ch. 70; cited at pp. 439, 454, and *Attorney-General* v. *South Staffordshire Waterworks Co.*, 25 T. L. R. 408; in which the decision in the *Frimley Case* was followed. In the last mentioned case the works had been erected and in operation for some time and it was urged that delay had barred the remedy. The Court, however, held otherwise, but suspended the operation of the injunction in order to enable the water company to obtain a special Act sanctioning the works.

In the following case the *Frimley Case, supra,* was distinguished :—

A water company, who under their earlier Acts had certain general powers for the sinking of wells, were empowered by an Act of 1904 to construct additional waterworks. The Act of 1904 recited the deposit of plans, incorporated (by s. 3) the Waterworks Clauses Act, 1847, in general terms, defined (by s. 4) the waterworks to be the works authorised by the company's earlier Acts and the present Act, and then proceeded (by s. 5) to empower the company to acquire additional lands not exceeding a certain acreage anywhere within their limits of supply, and (by s. 6) to construct a further reservoir in a different part of the company's area. Section 10 provided that the company might by agreement acquire and hold for the purposes of their undertaking additional lands within the limits of supply, not exceeding fifteen acres, and might on such lands execute any of the works and exercise any of the powers mentioned in or conferred by s. 12 of the Waterworks Clauses Act, 1847, which section (*inter alia*) authorise the sinking of wells. In pursuance of the powers claimed to have been conferred on them by the last-mentioned section the company acquired land about six miles away from their reservoir (but within the area of supply) and commenced to sink a well for the purpose of obtaining a new water supply to the reservoir. The plaintiff, in an action, claimed an injunction to restrain the company from constructing or using upon the additional land "a well or other works for the purpose of raising, collecting, or storing water and for carrying the same away for the purposes of their undertaking." It was held that the company were entitled to sink a well at any place at which a well was proper and necessary in connection with the waterworks undertaking authorised by the special Act, as that Act conferred upon them the right to execute the works and exercise the powers mentioned in or conferred by s. 12 of the Waterworks Clauses Act, 1847 (*Attorney-General* v. *Barnet District Gas and Water Co.* (1910), 74 J. P. 193).

It will be seen, therefore, that the solution of questions of this kind must be found in the wording of the special Act or Acts of the company in respect

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of whose undertaking the question arises. In this connection it may be useful to refer to variations which have appeared in the Model Water Bill during recent years, as, generally speaking, this Bill, as annually brought up to date, fixes the form in which clauses must be framed in order that they shall be acceptable to Parliament. In the Bill for 1900 there was a clause (No. 3) providing that undertakers might upon any lands for the time being belonging to them make and maintain (*inter alia*) such wells as might be necessary or convenient in connection with or subsidiary to the works shown on the deposited plans. In the Bill for 1907 this power was limited to the lands shown on the deposited plans. In the following year there appeared a clause (No. 8) providing that undertakers should not sink any well upon or construct any works for taking or intercepting water from any lands acquired by them unless the works and the lands upon which the same were to be constructed were specified in that (*i.e.*, the new Act) or some other Act of Parliament. In the Model Bill for 1910, the clause (No. 8) is now worded as follows:

"The *Corporation* shall not construct any works for taking or intercepting water from any lands acquired by them unless the works are authorised by and the lands upon which the same are to be constructed are specified in this or some other act of Parliament."

See, further, the INTRODUCTION.

Where a waterworks company's Act authorised them to divert the water of a stream by means of an open channel filled with stones, but imposed no limit as to quantity, and the company proceeded to carry out the diversion by means of a culvert, whereby a larger quantity of water would be taken, another company (who were entitled to the water of a stream into which the diverted stream had flowed) applied to restrain them from violating the terms of the Act in regard to the mode of diversion, the Lords Justices refused an injunction, on the ground that private persons seeking injunction in such cases must show a private interest and not merely an interest as one of the public (*Mayor, etc. of Liverpool* v. *Chorley Waterworks Co.* (1852), 2 De G. M. & G. 852).

An Act for supplying with water the town and port of Cardiff and the neighbourhood, after reciting that the town of Cardiff and the neighbourhood were insufficiently supplied with water, incorporated a company and gave it the usual powers, and enacted that the limits of the Act for the supply of water should comprise "the whole of the town and port of Cardiff, and the parishes and places within and adjoining to such town"; it was held, that the word "port" was used in the popular sense, and did not extend to the district fixed by the commissioners of the treasury as the port of Cardiff, for the purposes of the customs duties (*Cardiff* (*Mayor, etc.*) v. *Cardiff Waterworks Co.* (1859), 5 Jur. (N.S.) 953). The company were proceeding to lay down pipes which they alleged were necessary for the supply of Cardiff, but which they admitted they intended to use for the purpose of carrying water beyond the limits of their powers. At the suit of the Board of Health for Cardiff the court restrained the company from laying down pipes under the streets of Cardiff for the purpose of supplying with water any parish or place not being part of the port of Cardiff, or any parish or place within or adjoining such town (*ibid.*). The principle of the two last mentioned cases as to an owner being entitled to sue in respect of his private rights was recently applied in *Marriott* v. *East Grinstead Gas and Water Co.*, [1909] 1 Ch. 70, cited fully at p. 454.

The proviso in the above section, that in the exercise of their powers the undertakers "*shall do as little damage as can be*," relates to the mode of doing works authorised to be done, but does not regulate what those works should be. See *per* Lord CAMPBELL, C.J., in *R.* v. *East and West India Docks, etc. Rail. Co.* (1853), 2 El. & Bl. 466; and see *Fenwick* v. *East London Rail. Co.* (1875), L. R. 20 Eq. 544. In order to sustain an action, special damage must be shown (*Watkins* v. *G. N. Rail. Co.* (1851), 16 Q. B. 961).

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In a case under the corresponding section in the Railway Clauses Act (s. 16), it was held that the power conferred on the company by that section "is confined to matters which are not only done in the construction of the railway, but which are necessary to its construction" (*R.* v. *Wycombe Rail. Co.* (1867), L. R. 2 Q. B. 310; following *Attorney-General* v. *G. N. Rail. Co.* (1850), 4 De G. & S. 75). See also *Earl Beauchamp* v. *G. W. Rail. Co.* (1868), L. R. 3 Ch. 745; *Biscoe* v. *G. E. Rail. Co.* (1873), L. R. 16 Eq. 636; and *Sadd* v. *The Maldon, Witham and Braintree Rail. Co.* (1851), 20 L. J. Ex. 102, where it was said by POLLOCK, C.B., that "the distinction attempted to be made between works of necessity and works of convenience utterly fails." The power conferred on a railway company by s. 16 of the Railways Clauses Consolidation Act, to divert the course of a river or road, "in order the more conveniently to carry the same over or under or by the side of the railway, as they may think proper," is to be taken as cut down and qualified by a proviso that it be an act necessary for making, maintaining, altering or repairing and using the railway. Such a power, therefore, only authorises such a diversion when the road or river presents an actual obstacle to the construction of the line, and not in a case where the diversion is merely for the purpose of saving the company expense (*Pugh* v. *Golden Valley Rail. Co.* (1880), 15 Ch. D. 330). See also *Marquess of Breadalbane* v. *West Highland Rail. Co.* (1895), Ct. of Sess. Cas., 22 Rettie 307. An injunction will be granted where, in the exercise of powers of construction, more damage is done than is reasonably necessary, or where those powers are otherwise being exceeded (*Manser* v. *Northern and Eastern Counties Rail. Co.* (1841), 2 Rail. Cas. 380; *Ware* v. *Regent's Canal Co., supra; Dodd* v. *Salisbury and Yeovil Rail. Co.* (1859), 1 Giff. 158). But substantial damage must be shown in order to justify the interference of the court (*Holyoake* v. *Shrewsbury and Birmingham Rail. Co.* (1848), 5 Rail. Cas. 421; and see *Wandsworth B. of W.* v. *L. & S. W. Rail. Co.* (1862), 31 L. J. Ch. 854; and *Wandsworth B. of W.* v. *United Telephone Co.* (1884), 13 Q. B. D. 904). A municipal corporation were authorised to construct catchwaters, conduits, etc., through the plaintiff's estate, and from time to time to make good any damage done to the estate or the owner and tenants. They constructed a certain bywash, which after an unusually heavy storm caused a great deal of water to pass on to the plaintiff's land. The bywash was properly constructed under the authority of their Act of Parliament:—*Held*, that if any damage was caused by the overflow the plaintiff's remedy was by compensation and not by injunction (*Fielden* v. *Morley Corporation*, Jl. of G. L., August 9th, 1898, p. 319).

In 1838 an agreement was entered into between the Shaws Water Company and the police trustees of Greenock, respecting the supply of water for the use of the inhabitants. Prior to this agreement the town had been supplied with water by the police trustees, exercising statutory powers. The undertaking of the Shaws Water Company (which was a company with statutory powers) was to supply the police trustees with a defined quantity "of pure and wholesome water, equal in quality to the water then supplied by the police trustees," in consideration of which undertaking the police trustees, on the other hand, assigned to the water company certain rights, engaging on their part to refrain from and discontinue the supplying of water to public works or manufactories, or to private houses. In 1851, certain sugar refiners in Greenock, desiring to bring salt water from the harbour to their works, and with this object to lay down pipes in the streets of Greenock, and permission to do this having been granted by the police commissioners, the company sought to obtain an interdict (injunction) against the commissioners, but it was held that the subject-matter of the contract related to fresh water only, and therefore that the giving permission to take salt water was no breach of the contract (*Shaws Water Co.* v. *Magistrates of Greenock* (1855), 2 Macq. H. L. Cas. 151).

Penalty for obstructing construction of works.

13. Every person who shall wilfully obstruct any person acting under the authority of the undertakers in setting out the line of the works, or pull up or remove any poles or stakes driven into the ground for the purpose of setting out the line of such works, or deface or destroy any works made for the same purpose, shall be liable to a penalty not exceeding five pounds for every such offence.

Penalty for illegally diverting water.

14. After the streams or supplies of water hereby or by the special Act authorised to be taken by the undertakers shall have been so taken, every person who shall illegally divert or take the water supplying or flowing into the streams so taken, or any part thereof, or who shall do any unlawful act whereby the said streams or supplies of water may be drawn off or diminished in quantity, and who shall not immediately repair the injury done by him, on being required so to do by the undertakers so as to restore the said waters to the state in which they were before such act, shall forfeit to the undertakers any sum which shall be awarded in England or Ireland by two justices, and in Scotland by the sheriff, not exceeding five pounds for every day during which the said supply of water shall be diverted or diminished by reason of any act done by or by the authority of such person, and any sum so forfeited shall be in addition to the sum which he may be lawfully adjudged liable to pay to the undertakers for any damage which they may sustain by reason of their supply of water being diminished; and the payment of the sum so forfeited shall not bar or affect the right of the undertakers to bring or raise an action at law against such person for the damage so committed.

As to the recovery of penalties, see s. 85, *infra*.

Preservation of existing rights.

15. Provided always, that nothing herein contained shall prevent the owners and occupiers for the time being of lands through or by which such streams shall flow from using the waters thereof in such manner and to such extent as they might have done before the passing of the special Act, unless they shall have received compensation in respect of their right of so using such water.

As to the amount and nature of the user to which the owners and occupiers of lands through or by which streams flow are entitled, see notes to s. 6, *ante*, pp. 382 *et seq.*

Accommodation Works.

And with respect to the construction of works for the accommodation of lands adjoining the waterworks, be it enacted as follows:

Differences as to the construction of accommodation works to be settled by justices.

16. Where by the special Act the undertakers shall be required to erect any works for making good the interruption caused to any lands adjoining or near the waterworks, or otherwise, for the accommodation of such lands, then if any difference shall arise respecting the construction of any such accommodation works, or the kind or size or sufficiency thereof, or respecting the maintenance thereof, the same shall be determined in England or Ireland by two justices, and in Scotland by the sheriff, and such justices or sheriff shall also appoint the time within which such accommodation works shall be begun and finished by the undertakers.

See the case of *Blagrave* v. *Bristol Waterworks Co.* (1856), 1 H. & N. 369, cited in the notes to s. 6, p. 393. A somewhat similar provision is contained in the Railways Clauses Consolidation Act, 1845, s. 69; but there is this difference, that the section in the text is prefaced by the words, "Where by the special Act the undertakers shall be required to erect any works for making good,"

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etc. There is a general provision as to the accommodation works at the end of s. 12, p. 435. Under s. 69 of the Act of 1845, it has been decided that it is *ultra vires* of a compensation jury to award the expense of accommodation works to a landowner, the enforcing of the construction of such works being exclusively within the province of the justices (*South Wales Rail. Co.* v. *Richards* (1849), 18 L. J. Q. B. 310; *S. C. sub nom. R.* v. *South Wales Rail. Co.* (1849), 13 Q. B. 988). Nor is it the province of the justices to decide whether or not there should be any accommodation works, their powers being limited by the above section to the kind, number, dimensions, etc., of such works (*R.* v. *Waterford and Limerick Rail. Co.* (1852), 2 Ir. L. R. (N.S.) 580). As to what are accommodation works within the meaning of the Railways Clauses Act, see *R.* v. *Fisher* (1862), 3 B. & S. 191; *Rhondda and Swansea Rail. Co.* v. *Talbot,* [1897] 2 Ch. 131; and see also *R.* v. *Waterford and Limerick Rail. Co., supra.* As to how far the amount of compensation is affected by the accommodation works which have been or can be afforded, see *R.* v. *Brown* (1867), L. R. 2 Q. B. 630; and *Earl of Darnley* v. *L C. & D. Rail. Co.* (1867), L. R. 2 H. L. 43. The court will refuse to exercise a concurrent jurisdiction with the justices (*Hood* v. *N. E. Rail. Co.* (1870), L. R. 11 Eq. 116). The justices in settling the nature of accommodation works can only take into account the present condition of the land (*per* COCKBURN, C.J., in *R.* v. *Brown* (1867), L. R. 2 Q. B., at p. 632). Where a level crossing was made to accommodate the severed portions of an owner's land, and that owner sold the severed portions to different people, nothing being said in the conveyances as to the level crossing, it was held that the right to use the same ceased (*Midland Rail. Co.* v. *Gribble,* [1895] 2 Ch. 827).

When a level crossing is made across a railway for the accommodation of adjoining land, it may not be used so as substantially to increase the burden of the easement by altering or enlarging its character, nature, or extent, as enjoyed at the time the railway was constructed (*G. N. Rail. Co.* v. *McAlister,* [1897] 1 Ir. R. 587; *G. W. Rail. Co.* v. *Talbot,* [1902] 2 Ch. 759; *Taff Vale Rail. Co.* v. *Gordon Canning,* [1909] 2 Ch. 48).

If undertakers fail to execute such works, persons aggrieved may perform the same, and charge the expense to the undertakers.

17. If the undertakers shall for fourteen days next after the time appointed by such justices or sheriff for the beginning of any such accommodation works fail to begin such works, or, having begun such works, fail diligently to execute the same in a sufficient manner the person aggrieved by such failure may execute such works or repairs; and the reasonable expenses thereof shall, on demand, be repaid by the undertakers to the person by whom the same shall so have been executed; and if there be any dispute about the amount or nature of such expenses the same shall be settled in England or Ireland by two justices, and in Scotland by the sheriff.

Mines.

And with respect to mines be it enacted as follows:

Undertakers not entitled to mines unless previously purchased.

18. The undertakers shall not be entitled to any mines of coal, ironstone, slate, or other minerals under any land purchased by them, except only such parts thereof as shall be necessary to be dug or carried away or used in the construction of the waterworks, unless the same shall have been expressly purchased, and all such mines, excepting as aforesaid, shall be deemed to be excepted out of the conveyance of such lands, unless they shall have been expressly named therein and conveyed thereby.

It is provided by the Public Health Act, 1875 (Support of Sewers Amendment Act, 1883 (46 & 47 Vict. c. 37), s. 3, that ss. 18 to 27, both inclusive, of this Act, with respect to mines shall, in relation to any sanitary work of a local authority, be deemed (with certain modifications) to be incorporated with that Act and with the Sanitary Act under the authority of which such sanitary work has been or is constructed or is maintained. See *post*.

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A section similar to that in the text is contained in the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), s. 77, and in the Railways Clauses (Scotland) Act, 1845 (8 & 9 Vict. c. 33), s. 70. The owner of land granting to a railway company the right to make and maintain a tunnel through his land is entitled to work his minerals therein in accordance with ss. 77 & 78 of the Railways Clauses Act, and the railway company have no right to the adjacent or subjacent support of the minerals (*Fletcher* v. *G. W. Rail. Co.* (1860), 5 H. & N. 680; and see *Dudley Canal Co.* v. *Grazebrook* (1830), 1 B. & Ad. 59). See also *Pountney* v. *Clayton* (1883), 11 Q. B. D. 820, where a purchaser from the railway company of superfluous land was also held to have no right to adjacent or subjacent support. A landowner granting to a railway company the right to make and maintain a tunnel through his land, is in the same position with respect to his right to work mines under ss. 77 and 78 as if the company had actually purchased the land (*L. & N. W. Rail. Co.* v. *Ackroyd* (1862), 31 L. J. Ch. 588). After notice given by the owner and failure of the undertakers to take the minerals and pay compensation, the owner is entitled to work them up to and under the railway, working them in a proper manner, and according to the usual manner of working such mines in the district (*G. W. Rail. Co.* v. *Bennett* (1867), L. R. 2 H. L. 27). And in this case the House of Lords affirmed (what had been decided in earlier cases, see *supra*) that under their statutory purchase the company could not claim the right of an ordinary purchaser of the surface to subjacent and adjacent support, the statute having created a specific law for such matters, by which alone the rights of the company and the mine-owner are regulated (*ibid.*). In 1875 the M. Corporation purchased by agreement under the powers of a special Waterworks Act of 1847 (1), an estate from S., who reserved to himself the minerals thereunder, with full powers to work the same without making compensation; (2) an adjoining estate from T., including the minerals. In 1875 the corporation obtained a further special Act which incorporated the Waterworks Clauses Act, 1847, and under this special Act they constructed a reservoir partly on the S. land and partly on the T. land. By s. 22 of the Waterworks Clauses Act, 1847, *post*, p. 448, if the owner, lessee, or occupier of any mines lying under the reservoirs of the undertakers or within forty yards therefrom, be desirous of working the same he must give the undertakers notice in writing of his intention so to do thirty days before the commencement of working, and if it appear to the undertakers, after an inspection of the mines, that the working of the mines is likely to damage their works, and they be willing to pay compensation for the mines to the owner, lessee, or occupier thereof, then he shall not work the same; and by s. 23, *post*, p. 450, if, before the expiration of the thirty days the undertakers do not state their willingness to pay compensation to such owner, lessee, or occupier, he may work the mines as if that Act and the special Act had not been passed. The appellants, who were lessees of the mines under the S. land, gave notice to the corporation of their intention to work the mines under and adjacent to the reservoir, but the corporation gave no counter notice of their willingness to pay compensation for the mines, and accordingly the appellants worked the mines and caused a subsidence of the T. land. In an action to restrain the appellants from so working their mines as to damage the T. land, it was held that the mining sections (18—27) of the Waterworks Clauses Act, 1847, did not deprive the corporation of their common law right to lateral support for the surface of the T. land, and that they were entitled to an injunction in respect of the appellants' workings both within and without the forty yards limit (*New Moss Colliery Co.* v. *Manchester Corporation*, [1908] A. C. 117). Where a railway company, prior to the Act of 1845, purchased free from the conditions of that Act, and the owner granted a conveyance of the land reserving minerals, the House of Lords decided that on the principle that the owner could not derogate from his grant, the conveyance gave a right by implication to all reasonable subjacent and adjacent support (*Caledonian Rail. Co.* v. *Sprot* (1856), 2 Macq. H. L. 449). See to the like effect *Elliot*

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v. *N. E. Rail. Co.* (1863), 10 H. L. Cas. 333; *Caledonian Rail. Co.* v. *Lord Belhaven* (1857), 3 Macq. H. L. 56; *N. E. Rail. Co.* v. *Crosland* (1862), 32 L. J. Ch. 353; and *L. & N. W. Rail. Co.* v. *Walker*, [1903] A. C. 289. For cases turning on the special language of Inclosure Acts see *Consett Waterworks Co.* v. *Ritson* (1888), 22 Q. B. D. 318, 702; and *Butterknowle Colliery Co.* v. *Bishop Auckland Industrial Co-operative Co., Ltd.*, [1906] A. C. 305.

Where a railway company under the Railways Clauses Consolidation (Scotland) Act, 1845, gave notice to leave unworked certain minerals lying under or near the railway, and compensation was duly settled and paid, the railway company demanded a conveyance of the minerals so left unworked on the ground that the property in the minerals had become vested in them. It was held that the company were not entitled to such a conveyance (*Duke of Hamilton's Trustees* v. *Caledonian Rail. Co.* (1905), 7 F. 847).

The word minerals has received a very wide interpretation by the courts. In *Midland Rail. Co.* v. *Checkley* (1867), L. R. 4 Eq. 19, it was held that minerals included everything below the surface available for agricultural purposes, which could be made useful for any purpose, and included the right of quarrying as well as underground working. And in *Hext* v. *Gill* (1872), L. R. 7 Ch. 699, MELLISH, L.J., in the course of his judgment, said: "Many authorities, some at law and some in equity, have been brought before us to show what is the meaning of the word minerals. The result of the authorities, without going through them, appears to be this, that a reservation of minerals includes every substance which can be got from underneath the surface of the earth for the purpose of profit, unless there is something in the context or in the nature of the transaction to induce the court to give it a more limited meaning." Where the reservation is not contained in grant or contract but is statutory, see *G. W. Rail. Co.* v. *Blades*, [1901] 2 Ch. 624.

In *Earl of Rosse* v. *Wainman* (1848), 2 Ex. 800, not only lead ore, ironstone, and other substances containing metals, but also fossils and stone dug in quarries, and also a stratum of stone were held to be minerals. Further, as to stone, see *Midland Rail. Co.* v. *Checkley* (1867), L. R. 4 Eq. 19; *Dixon* v. *Caledonian Rail. Co.* (1889), 5 App. Cas. 820; *Micklethwait* v. *Winter* (1851), 6 Ex. 644; and *Greville* v. *Hemingway* (1902), 87 L. T. 443. As to slate, see *Duchess of Cleveland* v. *Meyrick* (1867), 37 L. J. Ch. 125. As to freestone, see *Bell* v. *Wilson* (1866), L. R. 1 Ch. 303; and *Glasgow & S. W. Rail. Co.* v. *Bain* (1893), Ct. of Sess. Cas., 21 Rettie, 134; *cf. Nisbet Hamilton* v. *N. B. Rail. Co.* (1886), Ct. of Sess. Cas., 13 Rettie, 454; and *Earl of Hopetoun* v. *N. B. Rail. Co.* (1893), Ct. of Sess. Cas., 20 Rettie, 704. As to china clay, *Hext* v. *Gill* (1872), L. R. 7 Ch. 699; *Shaftesbury* v. *Wallace*, [1897] 1 Ir. 381; *G. W. Rail. Co.* v. *Carpalla United China Clay Co.*, [1909] 1 Ch. 218; and on appeal, [1910] A. C. 83; and as to brick-earth and clay, *Earl of Jersey* v. *Neath Guardians* (1889), 22 Q. B. 555; *Church* v. *Inclosure Commissioners* (1862), 11 C. B. (N.S.) 664. As to common clay see *N. B. Rail. Co.* v. *Turners, Ltd.* (1904), 41 S. L. R. 706. As to coprolites, *Attorney-General* v. *Tomline* (1877), 5 Ch. D. 750. As to gravel, see *per* JESSEL, M.R., in *Errington* v. *Metropolitan Rail. Co.* (1882), 19 Ch. D. 559; and *cf. In re Metropolitan District Rail. Co. and Cotton's Trustees* (1881), 45 L. T. 103. As to gravel and sand, see *Scott* v. *Midland Rail. Co.*, [1901] 1 Q. B. 317. As to limestone, see *Midland Rail. Co.* v. *Robinson* (1889), 15 App. Cas. 19. As to sandstone, see *North British Rail. Co.* v. *Budhill Coal and Sandstone Co.*, [1910] A. C. 116.

In *Midland Rail. Co.* v. *Haunchwood Brick and Tile Co.* (1882), 20 Ch. D. 552, it appeared that the defendants had a bed of clay used for making a peculiar kind of brick, and that there were three or four feet of surface earth overlying, and that the clay was entirely got by open workings. The railway was made in a cutting in the bed of clay itself, so that the ballast, sleepers, and rails were laid upon the clay. The contention of the company was that the governing word in s. 77 of the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), was not "minerals," but "mines," and that an open working was not a mine. KAY, J., decided that this was a mine within the

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meaning of s. 77, and might, unless the company were willing to make compensation to the landowner, be dug and worked by him. This case was followed in *Midland Rail. Co.* v. *Miles* (1886), 33 Ch. D. 632. The point next arose in a Scotch case—*Lord Provost, etc. of Glasgow* v. *Farie* (1888), 13 App. Cas. 657. The Corporation of Glasgow (having the supply of water in their hands, and their Acts having incorporated therewith the Waterworks Clauses Act, 1847) purchased and took a conveyance of a "piece of ground," with a reservation of "the whole coal and other minerals in the said lands in terms of the Waterworks Clauses Act, 1847." At the time of the purchase it was known that the land contained clay. The corporation constructed a reservoir and other works to the value of £52,000 on the land so purchased. The respondent being desirous of working the clay, the corporation contended that the seam lay very near the surface of the ground at an average of two feet only, and, therefore, it could not be worked by mining, and that on his adjoining land the respondent worked the clay by means of an open quarry into the seam. The respondent's point was that the clay was a mineral in the sense of the Act of 1847 and of the conveyance. Lord Halsbury, L.C., was of opinion that, whatever might be the law applicable in England upon such facts, as to which he reserved his opinion, this was a case to be decided by Scotch law, and that by that law it had been held that "mines and minerals" did not include freestone which could only be obtained by quarrying (*Menzies* v. *Breadalbane* (1818), 19 F. C. 531, and *Hamilton* (*Duke of*) v. *Bentley* (1841), 3 Ct. Sess. Cas., 2nd series, 1121). Lord Watson was of opinion that the legislature "intended the words 'mines of coal, ironstone, slate, and other minerals' to have the same meaning in all the three countries"; that every substance, being a mineral within the meaning of these clauses, is reserved to the owner irrespective of the method by which it may be wrought; that "mines" must be taken to signify "all excavations by which the excepted minerals may be legitimately worked and got"; but in this particular case he held that the enactments in question described the excepted mines of minerals as lying under the land, and contemplated that the purchaser under compulsory powers should become owners of "the land," and he came to the "conclusion that the expression 'the land' cannot be restricted to vegetable mould or to cultivated clay, but that it naturally includes, and must be held to include, the upper soil, including the subsoil, whether it be clay, sand, or gravel; and that the exceptional depth of the subsoil, whilst it may enhance the compensation payable at the time, affords no ground for bringing it within the category of excepted minerals." Lord Macnaghten was also in favour of the corporation, but on the ground that open workings were not mines within the meaning of s. 77. Lord Herschell dissented, and was of opinion that "the reservation must be taken to extend to all such bodies of mineral substances, lying together in seams, beds, or strata, as are commonly worked for profit and have a value independent of the surface of the land." The judgment of the majority of the House of Lords was, therefore, in favour of the corporation. See *Todd, Birleston & Co.* v. *N. E. Rail. Co.*, cited *infra*. A somewhat similar question came before the House for decision in the following year:—*Midland Rail. Co.* v. *Robinson* (1889), 15 App. Cas. 19. In this case the materials sought to be worked were ironstone and limestone, and the company contended that they were not "mines and minerals" within the meaning of s. 77 and following sections, because they were to be got by open quarrying instead of underground workings. Lords Herschell and Watson were of opinion that they were nevertheless "mines" within the Act. Lord Macnaghten dissented, retaining the opinion he had expressed in *Fairie's Case*. The judgment of the House was, therefore, in favour of the respondent. In *Ruabon Brick and Terra Cotta Co.* v. *G. W. Rail. Co.*, [1893] 1 Ch. 427, it appeared that underneath the railway company's line lay a bed of valuable clay, which came up nearly to the surface of the land, being only covered by a layer of surface soil, or "fey," varying from three to eight feet in thickness, and that the custom in the district, where there were various works of the same description as that of the plaintiffs', was to get the clay by open quarrying, and not by underground workings. The railway company (pp. 441, 442),

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admitted that the clay must be treated as a mineral within the mineral sections of the Railways Clauses Act, and that the usual manner of working this particular kind of mineral was from the surface. But they contended "that when the surface has been sold for a statutory purpose the mine-owner is not entitled to come upon that surface and take it away"; and it was admitted that the mine-owner "may quarry and work from underneath until he lets down the surface." The Court of Appeal (affirming the judgment of KEKEWICH, J.) decided that the mine-owner was entitled to work the clay from under the land conveyed to the company, "and for that purpose was entitled to enter upon the said land of the defendants so conveyed as aforesaid, and to remove the ballast, fey, or surface soil lying or being above such clay." For the sequel to this case, see *R.* v. *G. W. Rail. Co.* (1893), 62 L. J. Q. B. 572. See also *In re Lord Gerard and L. & N. W. Rail Co.*, [1895] 1 Q. B. 459.

The principles governing *Hext* v. *Gill* (*ante*, p. 444), and similar cases which relate to reservation of minerals by grant or contract are not applicable where the reservation is by statute, *e.g.*, the Railways Clauses Consolidation Act, 1845, s. 77. Therefore, clay forming the substance or subsoil, and constituting "the land" purchased by a railway company is not a "mineral" within that section (*G. W. Rail. Co.* v. *Blades*, [1901] 2 Ch. 624). This decision was approved by the Court of Appeal in *Todd, Birleston & Co.* v. *N. E. Rail. Co.*, [1903] 1 K. B. 603.

See a recent Scotch case relating to sandstone, where most of the authorities were reviewed, *North British Rail. Co.* v. *Budhill Coal and Sandstone Co.*, [1910] A. C. 116.

In 1830, under the powers of a special Act of 1825, land was conveyed to a tramway company for the purpose of a horse tramway authorised by the Act, which reserved to the owner of the land conveyed the subjacent mines with power to work them, but so as not to injure the tramway. By a special Act of 1855, the tramway was vested in another company thereby incorporated with power to alter the tramway into a railway of the modern type. That Act incorporated the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), and repealed the Act of 1825, but without prejudice to anything done under it, and to all rights and liabilities which, if the repealing Act were not passed, would be incident to or consequent on anything so done. Under that Act of 1855 a line of railway suitable for locomotive engines and carriages was laid down and worked over the land comprised in the conveyance of 1830. In 1892, the defendants, the present owners of the subjacent mines, gave the plaintiffs, the present owners of the railway, notice under s. 78 of the Railways Clauses Consolidation Act, of their intention to work the mines, and, on the plaintiffs declining to pay compensation, proceeded to work the mines, and in so doing caused subsidences of the surface and railway. Thereupon the plaintiffs brought an action for an injunction, claiming to be entitled, by virtue of the conveyance of 1830, to an easement or right of support, and to be under no liability to purchase the mines under the Railways Clauses Consolidation Act:—*Held*, that the plaintiffs were entitled, under the conveyance, to a right of support from the subjacent mines without payment of compensation; that such right had not been lost by the alteration of the old tramway into a railway; that the Act of 1855 did not operate to alter the express contract entered into in 1830 by the predecessors of the plaintiffs and defendants; and that the plaintiffs were entitled to an injunction (*G. W. Rail. Co.* v. *Cefn Cribbwr Brick Co.*, [1894] 2 Ch. 157).

Where an Act consolidating the provisions of various Acts relative to canal navigation in the Trent and Mersey districts, directs that questions relating to compensation for not working mines should be tried before a justice of assize, it was held that the Chancery Division had no jurisdiction to try the action (*Hanley and Bucknall Coal Co.* v. *North Staffordshire Rail Co.* (1891), 64 L. T. 656).

Where a corporation were under an Act empowered to make a conduit for water through a field at some distance below the surface, it was held that the vendor was not entitled to compensation for severance of minerals where they were not required, by the provisions of the Waterworks Clauses Act, 1847, to purchase them (*In re Corporation of Huddersfield and Jacomb* (1874), L. R. 17 Eq. 476; and on appeal, L. R. 10 Ch. 92).

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Where the defendants' lease contained a reservation of "all mines and minerals," and the defendants were boring for the purpose of obtaining water beneath the surface of the land, and had bored through certain strata of red rock and coal of from six to eight inches in thickness, which it was admitted could not be commercially worked to a profit at the present time, BYRNE, J., granted an injunction, holding that they fell within the reservation in the lease as being substances which had "a use and a value of their own independent of and separable from the rest of the soil" (*Johnstone* v. *Crompton & Co.*, [1899] 2 Ch. 190).

In land demised to a gas company for ninety-nine years, with a reservation to the lessor of all mines and minerals, for the erection of a gasholder and other buildings, a prehistoric boat embedded in the soil six feet below the surface was discovered by the lessees in the course of excavating for the foundation of the gasworks:—*Held*, that the boat, whether regarded as coming within the reservation of minerals, or as part of the soil in which it was embedded, or as a chattel, did not pass to the lessees by the demise, but was the property of the lessor, though he was ignorant of its existence at the time of granting the lease (*Elwes* v. *Brigg Gas Co.* (1886), 33 Ch. D. 562). *Cf. South Staffordshire Water Co.* v. *Sharman*, [1896] 2 Q. B. 44.

For a case in which a question arose as to right to support of water pipes by subjacent minerals, and which turned upon the construction of certain private Acts and a conveyance, see *Edinburgh District Water Trustees* v. *Clippen's Oil Co., Ltd.* (1901), 3 F. 156, affirmed H. L., [1904] A. C. 64.

Map and plan of underground works of undertakers to be made.

19. The undertakers shall from time to time, within six months from the time at which any pipes, conduits, or underground works shall have been laid down or formed by them, cause a survey and map to be made of the district within which any such pipes or underground works shall be laid, on a scale not less than one foot to a mile, and shall cause to be marked thereon the course and situation of all existing pipes or conduits for the collection, passage, or distribution of water and underground works belonging to them, in order to show all such underground works within the said district, and shall, within six months from the making of any alterations or additions, cause the said map to be from time to time corrected, and such additions made thereto as may show the line and situation of all such pipes, conduits, and underground works as may be laid down or formed by them from time to time after the passing of the special Act; and such map and plan, or a copy thereof, with the date expressed thereon of the last time when the same shall have been so corrected as aforesaid, shall be kept in the office of the undertakers, and shall be open to the inspection of all persons interested in the same within the said district.

There is no corresponding section in the Gasworks Clauses Acts, 1847 and 1871.

The preparation and deposit of this map is a condition precedent to the right of the undertakers to recover from the owner of minerals lying under the pipes for damage caused to the pipes by the working of the minerals by ordinary methods (*South Staffordshire Waterworks Co.* v. *Mason* (1887), 56 L. J. Q. B. 255). As to when the owner of minerals may be liable for injury caused by the working, see s. 23, *post*.

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Cf. s. 88 of City of London Gas Act, 1868 (31 & 32 Vict. c. cxxvi.), *ante* p. 307, s. 20 of the Public Health Act, 1875, and s. 3 of the Public Health (Support of Sewers) Act, 1883, *post*, p. 941.

Copies of such map or plan to be deposited with clerk of the peace, etc.

20. The undertakers shall from time to time within three months from the time at which any such map or plan, or any such correction thereof or addition thereto, shall have been made as aforesaid, deposit with the clerks of the peace in England or Ireland, and with the sheriff clerks in Scotland, of every county, and the town clerk of every burgh in Scotland, in which such district or any part thereof may be situate, and also with the parish clerks of the several parishes in England, and clerks of the union of the several parishes in Ireland, and the schoolmaster of the several parishes in Scotland, in which such underground works shall be situate, copies of the said map or plan, with all such particulars, and all such corrections and additions as aforesaid, so far as relates to such counties, burghs, and parishes respectively.

Clerks of the peace, etc., to receive and keep copies of the map, etc., and allow inspection. 7 Will. 4, & 1 Vict. c. 83.

21. The said clerks of the peace, sheriff clerks, and town clerks, parish clerks, clerks of the union, and schoolmasters shall receive the said copies of the said map and plan respectively, and shall keep the same, and shall allow all persons interested to inspect the same, and take copies or extracts of and from the same, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of maps and plans deposited under an Act passed in the first year of the reign of her Majesty, intituled, "An Act to compel clerks of the peace for counties, and other persons, to take the custody of such documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament."

See provisions of 7 Will. 4 & 1 Vict. c. 83, *ante*, p. 432. This Act may now be cited as the Parliamentary Documents Deposit Act, 1837 (Short Titles Act, 1896).

Mines lying near the works not to be worked until owners give notice to undertakers of their intentions.

22. Except where otherwise provided for by agreement between the undertakers and other parties, if the owner, lessee, or occupier of any mines or minerals lying under the reservoirs or buildings belonging to the undertakers, or under any of their pipes or works which shall be under ground, and shall be described in the map or plan which shall be so kept and deposited as hereinbefore mentioned, or within the prescribed distance, if any, and if no distance be prescribed, within forty yards therefrom, be desirous of working the same, such owner, lessee, or occupier shall give the undertakers notice in writing of his intention so to do thirty days before the commencement of working; and upon the receipt of such notice it shall be lawful for the undertakers to cause such mines to be inspected by any person appointed by them for the purpose, and if it appear to the undertakers that the working of such mines or minerals is likely to damage the said works, and if they be willing to make compensation for such mines to such owner, lessee, or occupier thereof, then he shall not work the same; and if the undertakers and such owners do not agree as to the amount of such

Upon receipt of notice undertakers may take the mines, making compensation to the owners.

compensation, the same shall be settled as in other cases of disputed compensation. **Sect. 22.**

See *Smith* v. *G. W. Rail. Co.* (1877), 3 App. Cas. 165, decided on a corresponding section in the Railways Clauses Consolidation Act, 1845, and notes to s. 18, pp. 442 *et seq.*

A receipt for compensation paid in respect of minerals left unworked is not chargeable with *ad valorem* stamp duty (*G. N. Rail. Co.* v. *Commissioners of Inland Revenue,* [1901] 1 Q. B. 416).

In an arbitration under the Lands Clauses Acts and the Waterworks Clauses Act, 1847, to assess the compensation payable to the owner of coal mines in respect of his being prevented from working seams of coal lying under and near to the reservoir of a waterworks company, the arbitrator is entitled to take into consideration, as an element in determining the amount of compensation to be paid, a rise in the value of coal which has occurred between the date of the company's notice to treat and the making of his award (*In re an arbitration between The Bwllfa and Merthyr Dare Steam Collieries* (1891), *Ltd., and The Pontypridd Waterworks Co.,* [1903] A. C. 426).

In an arbitration under the corresponding section of the Railways Clauses Consolidation Act, 1845, an arbitrator awarded a sum for compensation and also a sum as interest from the date of the company's notice to that of the award upon the amount directed by him to be paid as compensation. The Court of Appeal decided that the case was not one of sale and purchase and that until the amount to be paid as compensation was ascertained, no implication as to the right to interest could arise (*Richards and G. W. Rail. Co., In re an arbitration between,* [1905] 1 K. B. 68).

A coal company who held a lease entitling them to carry away all the coal under certain lands for the term of twenty-one years, gave notice under s. 78 of the Railways Clauses Consolidation Act, 1845, to a railway company of their intention to work coal under the railway. The railway company thereupon required them to leave certain coal unworked. It would not have been possible for the coal company within the term of their lease to work all the coal under the lands leased to them, and the only result of the railway company's requirement was that they were compelled to work other coal under such lands at an increased cost:—*Held*, that the compensation payable under s. 78 of the Railways Clauses Consolidation Act, 1845, to the coal company and the reversioners was the profit which they would have made, respectively, if the coal to which the railway company's requirements related had been worked, and not the damage caused to them by the interference with the working of the coal under the leased lands (*Re Eden and others and the N. E. Rail. Co.,* [1907] A. C. 400). See also *Rugby Portland Cement Co.* v. *L. & N. W. Rail. Co.,* [1908] 2 K. B. 606.

As to question between tenant for life and remainderman, see *In re Fullerton's Will,* [1906] 2 Ch. 138.

Section 22, *supra*, is qualified in important particulars by the Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883 (46 & 47 Vict. c. 37), so far as regards "sanitary works" as defined by that Act. See the Act, *post.*

As to the right of support for gas pipes, see *ante*, pp. 171 *et seq.*

Where an owner or lessee of minerals under a water pipe contravened the above enactment by working within the prohibited area before giving notice, it was held that he was not thereby debarred from afterwards giving notice as required by the statute (*Edinburgh and District Water Trustees* v. *Clippen's Oil Co., Ltd.* (1898), Ct. of Sess. Cas., 25 Rettie, 504). In an application for interdict by water undertakers under s. 23 to prevent a mineral owner who had been working the limestone within forty yards of a pipe by the method known as stoop-and-room from removing the stoops, it was proved that in the case of other minerals worked in the same way, it was usual to remove the stoops, but it was not proved that there was such usage in the

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case of limestone :—*Held*, that the complainer had failed to show that to do so would be an unusual manner of working (*ibid.*). See also *Edinburgh and District Water Trustees* v. *Clippen's Oil Co., Ltd.* (1899), Ct. of Sess. Cas., 1 Fraser, 899.

Under the powers of an Act of 1819, a water company, in 1821, opened a track and laid a pipe for the supply of water from the Crawley Spring to the City of Edinburgh, a portion of which pipe passed through the lands of Pentland and Straiton. In 1898, the Edinburgh and District Water Trustees (who had succeeded to the powers of the water company) commenced an action against the owners of Straiton and the tenants of the minerals in Pentland to have it declared that they were entitled to support for their pipe, and that the defenders were not entitled so to work the minerals as to injure or to bring down the pipe, and for interdict. For the defenders it was contended that there was no right of support for the pipe under the Act of 1819 or at common law. The Court of Session decided (1) that the Act of 1819, on a sound construction of it, contained clauses under which the owners of lands in whose ground the pipe was laid were entitled to claim compensation for any injury thereby occasioned to them ; (2) that after the lapse of seventy years from the date when the pipe was laid it must be assumed, either that compensation had been paid or that the right thereto had been waived; and (3)—following *L. and N. W. Rail. Co.* v. *Evans*, [1893] 1 Ch. 16—that the statutory right to lay the pipe carried with it a right of support for the pipes and interdict was granted (*Clippen's Oil Co., Ltd.* v. *Edinburgh and District Water Trustees* (1900), 3 Fraser, 156, affirmed H. L., [1904] A. C. 64).

In 1877 the Edinburgh and District Water Trustees under the powers of an Act of 1872, which incorporated the Waterworks Clauses Act, 1847, laid another pipe known as the Moorfoot pipe. In crossing certain land the Moorfoot pipe was laid side by side with the before-mentioned Crawley pipe and less than two feet apart, so that if the one were exposed to injury by subsidence the other could not escape. The oil company, who were entitled to the minerals under the land, gave notice of their intention to work the minerals under the Moorfoot pipe and the water trustees served a counter notice requiring the oil company to abstain from working, and stating that they were prepared to treat for compensation " for the same in so far as you are entitled thereto." The parties then went to arbitration, the water trustees contended that the oil company were not entitled to compensation for the minerals under the Moorfoot pipe as the oil company were bound to keep them unworked for the support of the Crawley pipe. The umpire awarded substantial compensation, viz., £8,079 in respect of shale and limestone and £2,250 in respect of freestone. The action was brought to enforce payments of these sums. The House of Lords, affirming the decision of the First Division, held that the compensation awarded might be recovered, and declined to disturb the award (*Edinburgh and District Water Trustees* v. *Clippen's Oil Co., Ltd.* (1902), Ct. of Sess. Cas. 4 Fraser, 40, H. L.)

As to the ownership of mines and minerals under disturnpiked roads or highways, and the conditions under which they may be worked, see s. 27 of the Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), s. 27. As to the measure of damages where a road is let down by subsidence, see *Lodge Holes Colliery Co.* v. *Wednesbury Corporation*, [1908] A. C. 323.

If company unwilling to treat for payment of compensation, owner may work the mines.

Owners to make good damage occasioned by

23. If before the expiration of such thirty days the undertakers do not state their willingness to treat with such owner, lessee, or occupier for the payment of such compensation, it shall be lawful for him to work the said mines, and to drain the same, by means of engines or otherwise, as if this Act and the special Act had not been passed, so that no wilful damage be done to the said works, and so that the said mines be not worked in an unusual manner ; and if any damage or obstruction be occasioned to the works of the undertakers by the working of such mines in an unusual manner, the same shall be forthwith repaired or removed (as the case may require), and such damage made good by the owner, lessee, or occupier of such mines or minerals, and at his own expense; and if such repair or removal be not forthwith done, or if the undertakers shall so think fit, without waiting for the same to be done by such owner, lessee, or occupier, it shall be lawful for the undertakers to execute the same, and recover from such owner, lessee, or occupier the expense occasioned thereby by action in any of the superior courts.

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working the mines in an unusual manner.

See *Edinburgh and District Water Trustees* v. *Clippen's Oil Co., Ltd.* (1901), cited *supra.*

See notes to s. 18, *ante*, p. 442.

Mining communications.

24. If the working of any such mines under the said works of the undertakers or within the above-mentioned distance therefrom be prevented as aforesaid by reason of apprehended injury to such works, it shall be lawful for the respective owners, lessees, and occupiers of such mines to cut and make such and so many airways, headways, gateways, or water levels through the mines, measures, or strata, the working whereof shall be so prevented as may be requisite to enable them to ventilate, drain, and work any mines or minerals on each or either side thereof, but no such airway, headway, gateway, or water level shall be of greater dimensions or sections than the prescribed dimensions or sections, and where no dimensions are prescribed eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the said works so as to injure the same.

Company to make compensation to owner, lessee, or occupier of mines for expenses incurred by reason of mines being worked.

Disputes to be settled by arbitration.

25. Except where otherwise provided for by agreement, the undertakers shall from time to time pay to the owner, lessee, or occupier of any mines of coal, ironstone, and other minerals extending so as to lie on both sides of any reservoirs, buildings, pipes, conduits, or other works, all such additional expenses and losses as shall be incurred by such owner, lessee, or occupier by reason of the severance of the lands over such mines or minerals by such reservoirs or other works, or of the continuous working of such mines or minerals being interrupted as aforesaid, or by reason of the same being worked under the restrictions contained in this or the special Act, and for any mines or minerals not purchased by the undertakers which cannot be obtained by reason of making and maintaining the said works, or by reason of such apprehended injury from the working thereof as aforesaid; and if any dispute or question shall arise between the undertakers and such owner, lessee, or occupier as aforesaid touching the price of such minerals, the same shall be settled by arbitration in such manner as is provided by the Lands Clauses Consolidation Act, if the undertaking shall be situate in England or Ireland, and by the Lands Clauses Consolidation (Scotland) Act, if the undertaking shall be situate in Scotland.

The provisions of the Lands Clauses Consolidation Act, 1845, will be found *in extenso*, *post*, p. 1158.

The Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), contains a similar enactment (s. 81). Under it, it has been held that in estimating

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compensation, an arbitrator is entitled to take into account not only the losses or expenses incurred by a mine-owner by reason of his land being severed, and the working of his mines being interrupted, but also additional losses or expenses not then actually sustained or incurred, but which would necessarily be sustained or incurred in working the mines, and which were capable of being immediately estimated with reasonable certainty (*Whitehouse* v. *Wolverhampton and Walsall Rail. Co.* (1869), L. R. 5 Ex. 6).

In *Holliday* v. *Corporation of Wakefield*, [1891] A. C. 81, the House of Lords decided that a mine-owner, part of whose minerals was taken by a waterworks undertaking, was not entitled in the arbitration which followed to claim compensation not only for the coal taken but also compensation for prospective injury, which may be caused by his not being able at some future date to work his mine to its utmost. He must wait for compensation until the injury arises. In this case, the corporation, by a special Act which incorporated the Act of 1847, were authorised to construct a reservoir at Ardsley. The appellants, by two leases, had demised to them four seams of coal (known as the Cannel, the Doggy, the Little and the Middleton) underlying certain lands, and they were empowered to sink pits and exercise other rights on the surface. They were working the last three, but had not commenced to work the Cannel seam. The corporation acquired certain lands, including land the coal under which was demised by the leases referred to. After certain notices given by the appellants the corporation gave the appellants notice to treat for thirty-five acres of the Middleton seam, and also for their surface rights over certain lands defined by the notice. In the arbitration the appellants claimed compensation not only for the coal taken, but also "compensation in respect of the injurious affecting of their seams of coal, and for so much of their seams not purchased by the respondents as could not be worked by reason of the making and maintaining of their works, or by reason of the apprehended injury in the working thereof." The umpire ultimately stated his award in the form of a special case. He found that the workings of the appellants had not as yet approached the reservoir in such a manner as to cause any present risk to the appellants' mines or seams from the existence of the reservoir, assuming it to be filled with water. That if the appellants were free to work their mines without risk of interruption from the respondents' works, they could and would have got the whole of the Middleton and Cannel coal under the reservoir, and within forty yards of the boundary, within the terms of their leases, and that if the respondents purchased and obtained *in situ* the thirty-five acres of the Middleton seam which they had given notice to take, and no other coal in that or any other seam, the appellants, by reason of the respondents' works, and of apprehension of injury therefrom, to the Cannel seam, could not work or get more than 50 per cent. of the cannel and black coal under the reservoir or within twenty yards of its boundary. He also found that a prudent lessee working without right to compensation would be compelled by reason of such apprehension of injury to abstain from working or getting more than 50 per cent. of the cannel and black coal in the area above described, and that there was no reason to apprehend injury, present or future, from the respondents' works to any part of the Doggy seam, or of the Little seam, or to any part of the Cannel seam, if 50 per cent. of the cannel and black coal in the defined area were retained *in situ*, or to any part of the Middleton seam. The question submitted for the opinion of the court was "whether by virtue of the Waterworks Clauses Act or of the Lands Clauses Act, or otherwise, the claimants are entitled upon this arbitration to claim and to recover compensation for the prospective prevention of the working of more than 50 per cent. of the cannel and black coal within the defined area." The House of Lords decided (affirming the decision of the Court of Appeal) that the mine-owners were not entitled to claim or to recover compensation for the prospective prevention of the working of more than 50 per cent. of the coal within the defined area: inasmuch as though the word "lands" in s. 6 of the Act of 1847 includes "mines," the mine-owners were not injuriously affected within the meaning of s. 6; neither could they at present claim or recover under the mines clauses of that Act, ss. 18—27. See *Smith* v. *G. W. Rail. Co.* (1877), 3 App. Cas. 165.

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A railway company has been held to be responsible for injuries sustained by reason of water escaping from a stream in flood-time or collected from rain falling on the railway, and flowing along a cutting of the railway and percolating through the substratum into mines beneath, although such mines had not been worked at the time of the formation of the railway (*Bagnall* v. *L. & N. W. Rail. Co.* (1862), 31 L. J. Ex. 480). For other cases of damage to mines through the inflow or percolation of water, see notes to s. 6, *ante*, pp. 382 *et seq.*

The following lucid summary of the effect of the several sections of this Act relating to minerals is taken from the judgment of FRY, L.J., in *Holliday* v. *Wakefield Corporation* (1888), 20 Q. B. D., at pp. 716, 717, referred to by the Lord Chancellor on the hearing by the House of Lords of the appeal in that case, [1891] A. C. at p. 93 : "Under s. 18 the undertakers are not required to purchase mines or minerals under or near their works, but the statute leaves undertakers and mine-owners in the position of adjoining owners ; and except so far as the rights of either are interfered with by subsequent sections, those rights continue to be those of adjoining owners. Does the Act give a right of compensation to the owner of subjacent land who apprehends that an injury will arise should he work the minerals in such land? I pass over s. 19 and the two following sections, and come to s. 22. Under that a notice from the mine-owner that he is going to work under or within the prescribed distance of the works puts the undertakers to an election whether they will purchase the minerals or not. If they decline to purchase, then the owner may work the minerals as provided by s. 23, provided no wilful damage is done and the mines are worked in the usual manner. Section 24 assumes the purchase by the company of a portion of the subjacent mine arising out of the apprehended injury to the works—that is, the injury referred to in s. 22, as apprehended by the undertakers as likely to arise to the works from the working of the minerals. The only persons who can apprehend an injury up to this point are clearly the undertakers. Then follows s. 25, which it should be noted is one sentence. There is one set of persons who are to pay, namely, the undertakers, and one payee, the owner, lessee, or occupier of mines extending so as to lie upon both sides of any reservoir, buildings, pipes, conduits, or other works. There are five matters in respect of which payments are to be made: first, the severance of lands over the mines, that is, of surface lands ; secondly, the interruption of the continuous working of the mine, that is, the interruption which arises from the taking of a portion of the minerals which but for that the owner would have worked ; thirdly, the restrictions on working, such as those in s. 23 on working in anything but the usual manner; fourthly—and here there is no new sentence—the value of mines or minerals not purchased by the undertakers, but which cannot be got by reason of the works ; and fifthly, the apprehended injury from the working as aforesaid, that is, the injury referred to in ss. 22 and 24, as apprehended by the undertakers. It seems to me to follow that an injury which a mine-owner apprehends and which the undertakers do not is nowhere provided for. The reason for the omission seems to me to be that unless the undertakers purchase the mineral, the taking away of which would be injurious, the mine-owner is at liberty to work it."

Power to company to enter and inspect the working of mines, after giving notice of the same.

26. For better ascertaining whether any such mines are being worked or have been worked so as to damage the said works, it shall be lawful for the undertakers, after giving twenty-four hours notice in writing, to enter upon any lands through or near which the said works are situate, and wherein any such mines are being worked or are supposed to be, and to enter into and return from any such mines or the works connected therewith, and for that purpose it shall be lawful for them to make use of any apparatus or machinery belonging to the owner, lessee, or occupier of such mines, and to use all necessary means for discovering the distance from the said works to the parts of such mines which are being worked or about to be worked.

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Nothing to prevent undertakers from being liable to actions for injury done to mines.

27. Nothing in this or the special Act shall prevent the undertakers from being liable to any action or other legal proceeding to which they would have been liable for any damage or injury done or occasioned to any mines by means or in consequence of the waterworks, in case the same had not been constructed or maintained by virtue of this Act or the special Act.

Laying of Pipes.

And with respect to the breaking up of streets for the purpose of laying pipes, be it enacted as follows :

Power to break up streets, etc., under superintendence and to open drains.

28. The undertakers, under such superintendence as is hereinafter specified, may open and break up the soil and pavement of the several streets and bridges within the limits of the special Act, and may open and break up any sewers, drains, or tunnels within or under such streets and bridges, and lay down and place within the same limits pipes, conduits, service pipes, and other works and engines, and from time to time repair, alter, or remove the same, and for the purposes aforesaid, remove and use all earth and materials in and under such streets and bridges, and do all other acts which the undertakers shall from time to time deem necessary for supplying water to the inhabitants of the district included within the said limits, doing as little damage as can be in the execution of the powers hereby or by the special Act granted, and making compensation for any damage which may be done in the execution of such powers.

Sections 28 and 29 are similar to ss. 6 and 7 of the Gasworks Clauses Act, 1847. See notes on those sections, *ante*, pp. 163—180.

In regard to liability for injuries directly or indirectly consequent upon the exercise of the powers above given, see cases cited *ante*, pp. 435 *et seq.*

This section only enables a water company to lay pipes under streets in connection with the undertaking authorised by their special Acts, and if they are being laid in connection with unauthorised works, the owner of the soil can sue the water company in trespass, raise the question of *ultra vires*, and obtain an injunction without joining the Attorney-General (*Marriott* v. *East Grinstead Gas and Water Co.*, [1909] 1 Ch. 70).

Apart from statutory powers enabling them in that behalf, no company or person is entitled to break up streets, roads, etc., for the purpose of laying pipes. The cases on this subject are collected *ante*, pp. 163 *et seq.*

In *Chapman* v. *Fylde Waterworks Co.*, [1894] 2 Q. B. 599, the Court of Appeal held that this section gave power to undertakers to lay and repair service pipes, and that they only, and not the owner or occupier, were entitled to break up the streets for the purpose of repairing pipes. See, further, the cases cited with this case at p. 484, *post.*

An owner of some houses in Ramsgate, being dissatisfied with the waterworks company, proceeded to construct works for supplying water to his houses, and obtained the permission of the highway board to lay down pipes along the highway. He laid the pipes in the soil of a road adjoining the land of the plaintiff, who also owned the *solum* of the highway *ad medium filum;* and the plaintiff applied for an injunction to restrain the continuance of the pipes. This injunction was granted, it being held (affirming the decision of JESSEL, M.R.) that the plaintiff was not left to his remedy at law, and was not required to establish his right at law; and that the facts that the soil under the highway was of no value to the owner, and that his motive for applying to the court was not connected with the enjoyment of his land, were held not to be reasons against the granting of the injunction (*Goodson* v. *Richardson* (1874), L. R. 9 Ch. 221). The

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principle of this case was applied in *Marriott* v. *East Grinstead Gas and Water Co.*, *ante*, p. 454.

The corporation of Preston, who had no parliamentary powers for the purpose, supplied water to the adjoining urban district of Fullwood, and claimed the right to enter upon and break up the streets of Fullwood, whenever occasion should require for the purpose of repairing their water pipes, relying, as regarded some of the streets, on alleged irrevocable licences granted by the predecessors of the local board of Fullwood (*i.e.*, the surveyors of highways); and, as regarded other streets, on prescription:—*Held*, (1) that the claim of the corporation was to commit a nuisance; (2) that it was not in the power of the surveyors of highways to grant the alleged licences; (3) that therefore, as a grant could not be presumed, the corporation could not obtain the right claimed by prescription (*Preston Corporation* v. *Fullwood L. B.* (1886), 53 L. T. 718). See this case more fully referred to, *ante*, p. 168. The power given by s. 28 includes any works which the undertakers may deem necessary for the purpose of regulating the supply of water, and is not confined to the laying down of apparatus underground, but enables the undertakers to place such works on the surface of the street as may not be inconsistent with the substantial reinstatement of the road or pavement in its previous condition or create a nuisance (*East London Waterworks Co.* v. *Vestry of St. Matthew, Bethnal Green* (1886), 17 Q. B. D. 475). See, further, *post*, p. 484.

A waterworks company under their Act laid down one of their mains along and under a turnpike road, made under an Act which declared the soil to be in the owners of the adjoining land, subject only to the right to use and maintain the road. K. was owner of land on both sides, at a spot where the road was carried across a valley on an embankment, and being desirous of connecting his land on either side, K. employed the plaintiff, at an agreed sum, to make a tunnel under the road. In doing the work it was discovered that there was a leak in the defendant's main higher up the road; and on the plaintiff digging out the earth, the water from the leak flowed down upon the work and delayed it, so as to cause pecuniary damage to the plaintiff, for which he brought an action against the defendants. It was held, that, assuming K. could have maintained an action against the defendants for injury to his property (as to which the court gave no opinion), the damage sustained by the plaintiff by reason of his contract with K. having become less profitable, or a losing contract, in consequence of the injury to K.'s property, gave the plaintiff no right of action against the defendants (*Cattle* v. *Stockton Waterworks Co.* (1875), L. R. 10 Q. B. 453).

Under s. 28, qualified as it is by s. 29, the undertakers are not authorised to cut through plates lying on the top of a girder railway bridge carrying a public road, for the purpose of suspending their pipes to the girders (*Glasgow Corporation* v. *Glasgow and S. W. Rail. Co.*, [1895] A. C. 376). They may, however, dig a trench and lay pipes resting on a bridge (see *Taff Vale Rail. Co.* v. *Cardiff Gas Light and Coke Co.* (1907), 71 J. P. 350, a case decided on the corresponding section (s. 6) of the Gasworks Clauses Act, 1847).

"Tunnels" in the above section means tunnels similar in character to sewers and drains, and does not apply to a railway tunnel. Therefore, where public water commissioners had statutory authority to lay a line of water pipes in a street underneath which a line of railway passed, it was held that it was *ultra vires* of the commissioners to break open the brickwork forming the arch of the roof of the railway tunnel and to lay therein an iron trough carrying their water pipe (*Caledonian Rail. Co.* v. *Corporation of Glasgow* (1901), Ct. of Sess. Cas., 3 Fraser, 526).

By a special Act obtained in 1874, the Edinburgh water trustees were empowered to introduce a water supply to the city from Moorfoot, and to construct the necessary works, including an aqueduct termed "Conduit No. 2," upon the lines delineated in the deposited plans. Section 30 enacted that the trustees might "from time to time alter, enlarge, or increase the number of pipes for conveying water to the city," and might also "from time to time extend their existing works, mains, and pipes." In 1897 the water

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trustees proposed to lay a line of pipes 2,200 yards long, connecting at each end with Conduit No. 2 (which had been duly constructed under the powers conferred by the Act), but deviating from the course of that conduit:—*Held*, that s. 28 of the Act of 1847 was intended to enable the undertakers to carry out the undertaking authorised by their special Act, in details not specially dealt with in that Act, but that it was not intended to empower them to alter works specifically authorised by the special Act, and, therefore, that the proposed alteration was not authorised by s. 28 (*Clippen's Oil Co., Ltd.* v. *Edinburgh and District Water Trustees* (1897), Ct. of Sess. Cas., 25 Rettie, 370). By the Edinburgh and District Waterworks Act, 1869 (37 & 38 Vict. c. clvi.), the undertaking of the company which had previously supplied the Edinburgh district with water was transferred to trustees. The Act declared "the limits of the Act" to be certain districts named, which did not include the parish of Lasswade, and "all places within the limits of supply of the company." By a further Act of 1876 (s. 31), the water trustees were authorised to enter into contracts for the supply of water in the parish of Lasswade as follows:—"After affording a constant supply of water within the limits of the fourth-recited Act, and also affording a supply to Musselburgh, under this Act, the trustees may contract or arrange with any local authorities, or with any other persons within the parish of Lasswade in the county of Edinburgh, for the supply of water from their present sources of supply, or by means of their works authorised by the fourth-recited Act and this Act, to such local authorities or persons, not exceeding in the whole one hundred thousand gallons per day, and to receive and take such price as may be agreed on, and in case of difference as shall be fixed by the sheriff of the county of Midlothian: Provided always, that the trustees shall not be required to afford any such supply to premises higher than five hundred feet above the level of the sea: Provided also, that the said supply shall be subject to the same conditions with regard to withdrawal thereof to which the supply to the said town of Dalkeith is by this Act subject." This Act contained no definition of limits. In 1897 the Edinburgh water trustees proposed to lay a pipe under roads in the parish of Lasswade, not for the supply of water to Lasswade, but solely in connection with the Edinburgh water supply:—*Held* (1) that the definition of the water district in the Act of 1869, as including "all places within the limits of supply of the company" could not be read as including all places which might in the future be brought within the limits of supply of the trustees; and (2) that as the pipe was not intended for the purpose of supplying the parish of Lasswade with water, it was not a work within the limits of the special Act of 1876 (*ibid.*). A. presented a note of suspension and interdict against the Edinburgh water trustees laying down a pipe under roads which crossed a mineral field of which he was in part lessee and in part proprietor. Interim interdict having been refused, the pipe was completed during the proceedings under the supervision of an engineer appointed by the court. The laying of the pipe was ultimately found to be illegal, and A. then presented a supplementary note craving the court to ordain the water trustees to remove it. The trustees lodged answers alleging that they were applying to Parliament for a bill to authorise them to maintain and use the pipe, and that there was danger of the existing water supply being interrupted owing to the subsidence consequent on mineral workings. They undertook not to allow any water to stand in the new pipe, or to send water through it, unless the existing supply were interrupted. They craved the court to allow the pipe to remain meantime. The court being of opinion that there was no sufficient ground for apprehending the interruption of the existing supply, granted the prayer of the supplementary note (*ibid.*).

Ownership of *solum* of roads and streets.

The *solum* of roads and streets belongs *primâ facie* to the adjacent owners of the land on either side. Lord MANSFIELD, in *Goodtitle* v. *Alker* (1757), 1 Burr., at p. 143 (adopting 1 Roll. Abr. 392, B. pl. 1, 2), thus states the law as to highways: "The king has nothing but the passage for himself and his people; but the freehold and all profits belong to the owner of the soil." Where a piece of land which adjoins a highway is conveyed by general words, the presumption of law is that the soil of the highway *usque ad medium filum* passes by the conveyance, even though reference is made to a plan annexed, the measurement and colouring of which would exclude it (*Berridge* v. *Ward* (1861), 10 C. B. (N.S.) 400). ERLE, C.J., in giving judgment, said, "A close is conveyed which, though set out by measurement and referred to as coloured red in the plan annexed to the conveyance, abuts on a highway, and there being nothing to exclude the presumption of law that half of such highway *usque ad medium filum* should pass with the conveyance of the close, I am of opinion that it does so pass. The cases of *Simpson* v. *Dendy*(1860), 8 C. B. (N.S.) 433, and *Lord* v. *Commissioners for City of Sydney* (1859), 12 Moo. P. C. C. 473, are authorities to that effect, and the law on the subject is uniform." WILLIAMS, J., in the same case, said, "I am of opinion that where a close of land adjoins a highway, half of the latter passes with the land although the close be defined." The presumption applies whether the road is a public or a private one (*Holmes* v. *Bellingham* (1859), 7 C. B. (N.S.) 329). The presumption is equally applicable to streets in a town as to highways in the country; and this presumption is not rebutted by the fact that the vendor is the owner of the soil beyond the *medium filum viæ;* in such a case the presumption is that the conveyance passes the soil of the highway so far as it is vested in the vendor (*In re White's Charities, Charity Commissioners* v. *London Mayor*, [1898] 1 Ch. 659). See also *Haynes* v. *King*, [1893] 3 Ch. 439. As to the application of the rule to a conveyance of land bounded by the seashore, see *Mellor* v. *Walmsley*, [1905] 2 Ch. 164; and as to the application of the rule where a railway forms a boundary, see *Thompson* v. *Hickman*, [1907] 1 Ch. 550.

The presumption of law that the owner of the land abutting on a highway is also the owner of the soil of the highway *usque ad medium filum viæ* may be rebutted by evidence. In a suit between the lords of the manor and the corporation of Leeds, it was held (reversing the decision of Lord ROMILLY, M.R.) that the soil of Briggate, an ancient street in the borough of Leeds, belonged to the lords of the manor, there being sufficient evidence to rebut the presumption of ownership in the owners of the adjoining houses (*Beckett* v. *Corporation of Leeds* (1872), L. R. 7 Ch. 421). See also *Pryor* v. *Petre*, [1894] 2 Ch. 11; *University College, Oxford* v. *Oxford Corporation* (1904), 68 J. P. 471; and *Mappin Brothers* v. *Liberty & Co.*, [1903] 1 Ch. 118.

Cases as to presumption, and the rebuttal of the presumption, as to lands adjoining a river are collected at pp. 405 *et seq.*, *ante*.

The presumption of law above referred to prevails also in Scotland (*Ayr Magistrates* v. *Dobbie* (1898), Ct. of Sess. Cas., 25 Rettie, 1184).

In *Lade* v. *Shepherd* (1735), 2 Str. 1004, an action of trespass was successfully maintained by the owner of the soil for building a bridge across a ditch "the end whereof rested on the highway." And the grass and trees growing on the sides of the highway were held to be the property of the owners of the soil (*Turner* v. *Ringwood Highway Board* (1870), L. R. 9 Eq. 418; *Curtis* v. *Kesteven C. C.* (1890), 45 Ch. D. 504). In the case of a highway, though of varying width, but with fences on each side, the right of way *primâ facie* extends to the whole space between the fences. See the cases collected at p. 163, *ante*. Hence the placing of telegraph posts on the greensward at the side of a highway, so as to obstruct the right of passage which the public have over the whole space between the fences, is an indictable nuisance (*R.* v. *United Kingdom Telegraph Co.* (1862), 31 L. J. M. C. 166). Depasturing cattle upon a highway, on one side of which the plaintiff had land, was held to be a trespass on that part of the soil of the highway which belonged to the plaintiff (*Stevens* v. *Whistler* (1809), 11 East, 51). Where the trustees of a turnpike road set up a claim to the *solum*, Lord KENYON, C.J., held that "the soil was not vested in them, but remained in the persons who were entitled to it before the Act passed by which they were appointed. The trustees have only the control of the highway" (*Davison* v. *Gill* (1800), 1 East, at p. 69). While ownership of land adjoining either side of a public road is *primâ facie* evidence of a right to the soil extending to the centre of the road, a recent right founded on an inclosure under an Act, does not make a distinction with regard to the general law (*Cooke* v. *Green* (1823),

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11 Price, 736). "The owner who dedicates to public use as a highway a portion of his land, parts with no other right than a right of passage to the public over the land so dedicated; and may exercise all other rights of ownership, not inconsistent therewith; and the appropriation, made to and adopted by the public, of a part of the street to one kind of passage and another part to another, does not deprive him of any rights, as owner of the land, which are not inconsistent with the right of passage by the public": *per* MELLOR, J., in *St. Mary, Newington* v. *Jacobs* (1871), L. R. 7 Q. B., at p. 53. See *Harrison* v. *Duke of Rutland,* [1893] 1 Q. B. 142.

A railway company, in 1848, purchased freehold land of the plaintiff, adjoining a turnpike road, for the purpose of diverting the existing road and substituting a new one. In 1849, after having made the new road, they took possession, with the full knowledge of the plaintiff, of a portion of the old road not occupied by but adjoining their railway, and which by the diversion had ceased to form part of the turnpike road. At the time of the conveyance both the plaintiff and the defendants thought that the soil of the old road was vested in the turnpike trustees, and it was not included in the conveyance which referred to the map deposited by the defendants with the clerk of the peace, in which the road was described as a distinct property, reputed to belong to the trustees. By the local Acts regulating the management of the road, it appeared that it had been from time to time widened, and power was given to the trustees to purchase land for that purpose; but it did not appear that the soil of this particular portion had ever been purchased by the trustees under their Acts. In 1858 the plaintiff brought ejectment for this portion:—*Held*, first, that the presumption of the plaintiff's ownership of the road as owner of the adjacent soil, was not rebutted by the local Acts, so as to cast upon him the *onus* of showing that the land forming this part of the road had not been purchased by the trustees; secondly, that, although ordinarily by a conveyance of lands adjacent on both sides of a turnpike road the road would pass, though not referred to in the conveyance, the road under the circumstances of this case did not pass; thirdly, that the effect of the General Turnpike Act (3 Geo. 4, c. 126), coupled with the Railways Clauses Consolidation Act, was not to place the defendants in the position of trustees of the new road, and so to transfer to them the soil of the diverted road (*Marquis of Salisbury* v. *G. N. Rail. Co.* (1859), 5 C. B. (N.S.) 174).

As to the meaning of the word "tunnels" in the text, see *Caledonian Rail. Co.* v. *Glasgow Corporation* (1901), 38 S. L. R. 376.

Effect of vesting streets, etc., in local authorities.

The Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 149, provides that "all streets being or which at any time become highways repairable by the inhabitants at large . . . . shall vest in and be under the control of the urban authority." In *Coverdale* v. *Charlton* (1878), 4 Q. B. D. 104, it was held by the Court of Appeal that a certain highway, being a "street" within the meaning of this Act, so far vested in the local board that they could demise the right of pasturage thereon to the plaintiff. "'Street,' comprehends what we may call the surface, that is to say, not a surface bit of no reasonable thickness, but a surface of such a thickness as the local board may require for the purpose of doing to the street that which is necessary for it as a street, and also of doing those things which commonly are done in or under the streets; and to that extent they had a property in it": *per* BRAMWELL, L.J., at p. 118. And, in the same case, BRETT, L.J., at p. 121, said: "'Street' means more than the surface, it means the whole surface and so much of the depth as is or can be used, not unfairly, for the ordinary purposes of a street. It comprises a depth which enables the urban authority to do that which is done in every street, namely, to raise the street and to lay down sewers (for at the present day, there can be no street in a town without sewers), and also for the purpose of laying down gas and water pipes. 'Street,' therefore, in my opinion, includes the surface and so much of the depth as may be not unfairly used, as streets are used." As to the above *dictum* of BRAMWELL, L.J., see the judgment of Lord HALSBURY, L.C., in *Tunbridge Wells Corporation* v. *Baird,* [1896] A. C., at p. 439. An urban district council has power to remove encroachments upon any highway vested in it by s. 149 of the Public Health Act, 1875, without first taking proceedings summarily or by indictment of the person alleged to have encroached (*Reynolds* v. *Presteign U. D. C.*, [1896] 1 Q. B. 604). See also *Louth Urban District Council* v. *West* (1896), 60 J. P. 600. Under the Local Government Act, 1894, s. 26, it is the duty of a district council to prevent the stopping or obstruction of any right of way.

By s. 11 (6) of the Local Government Act, 1888 (51 & 52 Vict. c. 41), it is provided that main roads and the materials thereof, and all drains belonging thereto, shall, except when an urban authority retains the powers and duties of maintaining and repairing the same, vest in the county council.

By the London Government Act, 1899 (62 & 63 Vict. c. 14), which applies to the area included in the administrative county of London, metropolitan borough councils have been established, and they are invested with the powers of the old vestries which have ceased to exist, including their powers as road authority. As to main roads and other highways theretofore repairable by the London County Council, see now s. 6 (1), (2) of the Act of 1899, set out *ante*, p. 179.

The Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 96, provides that ". . . . all streets being highways . . . . shall vest in and be under the management and control of the vestry or district board of the parish or district," etc. In *Rolls* v. *Vestry of St. George the Martyr, Southwark* (1880), 14 Ch. D. 785, arising under this section, Jessel, M.R., followed the decision in *Coverdale* v. *Charlton, supra.* It appeared in that case that the plaintiff having, with the sanction of the Metropolitan Board of Works, made a new street over his land within the metropolitan district, upon which land were two old streets, N. Street and A. Street, an order was made at quarter sessions for stopping up part of N. Street as unnecessary, and an order was also made for diverting a part of A. Street, and opening the new street in lieu thereof. The vestry of the parish gave notice to the plaintiff that he must not convert to his own use the stopped-up part of N. Street, nor stop up A. Street or convert any part of the soil of it to his own use till he had purchased the same from the vestry. It was held by the Master of the Rolls, that the case was governed by *Coverdale* v. *Charlton, supra;* and that, under s. 96, the surface of the streets and the soil to such a depth as was required for the purposes of a road was in the vestry, so that when the streets were stopped up or diverted they could sell them under s. 154; and that the plaintiff had no right to deal with the soil without purchasing it from the vestry. On appeal, the Court of Appeal held that under the Act of 1855 all streets being for the time being highways are vested in the vestry, but only so long as they are highways, and that when they cease to be highways by being legally stopped up or diverted the interest of the vestry determines. And it was further held, that the plaintiff was entitled to convert to his own use the stopped-up part of N. Street and the diverted part of A. Street, subject, as to A. Street, to his first obtaining a certificate, under the Highway Act, 1835 (5 & 6 Will. 4, c. 50), s. 91, that the substituted street had been completed and put into good condition and repair.

Where the Public Health Act, 1875 (38 & 39 Vict. c. 55), or any local Act, vests a street in the urban authority, it only vests in them such property in the soil of the street as is necessary for the control, protection and maintenance of the street as a highway for public use, and confers upon them no authority to make excavations in the soil below the surface for the purpose of public conveniences (*Tunbridge Wells Corporation* v. *Baird*, [1896] A. C. 434).

It was held in a later case that this decision as to the extent to which the soil of a street is vested in a local authority, under s. 149 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), applies to the similar vesting in a local authority under s. 96 of the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120). Where an electric lighting company had illegally broken up the surface of a street within the district of a vestry in the metropolis and placed

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their pipes and wires at a depth of about two feet below the surface, it was held that the vestry were not by virtue of s. 96, the owners of the soil of the street at that depth, and that, although the company had acted illegally in breaking up the street, the vestry could not maintain an action for a mandatory injunction to compel the company to remove their pipes and wires, there being no continuing trespass upon or interference with any right of the vestry (*Vestry of St. Mary, Battersea* v. *County of London and Brush Provincial Electric Lighting Co., Ltd.*, [1899] 1 Ch. 474). For the unwarranted breaking up of the street, the company were summoned at the police court, and fined £2 and £2 2*s*. costs (Jl. of G. L., February 21st, 1899, pp. 431, 446 ; Electrician, February 24th, 1899, p. 621).

The Regent's Park Road was originally constructed by turnpike trustees appointed under a local Act of Parliament passed in 1826. The site, or part of the site, of the road where the plaintiffs' wires crossed it was originally glebe land, and was in 1828 conveyed to the trustees in fee simple by the rector of the parish, under the Turnpike Roads Act of 1822. The plaintiffs carried two guide or supporting wires across the road at a height of thirty-four feet. These wires were intended to support a cable carrying a supply of electricity to the house of one of the plaintiffs' customers. The road became vested in the defendants under s. 149 of the Public Health Act, 1875 :—*Held*, that the fact that originally the fee simple was conveyed to the trustees was no evidence that the soil *ad inferos* and the air *ad superos* were, or are, necessary for "street purposes," and so vested in the defendants. The extent of the "area of uses" is a question of fact; and, so long as they did not encroach upon that area, the plaintiffs were entitled to carry their wires across the street (*Finchley Electric Light Co.* v. *Finchley U. D. C.*, [1903] 1 Ch. 437; 67 J. P. 97).

A road constructed under certain special Acts authorising a ferry, became, by statutory authority, transferred to and vested in a local authority. The land through which the road ran was, by statutory authority, vested in a dock company, who proposed to carry a pipe or drain under the road for the purposes of their undertaking. The local authority sought to restrain them :—*Held*, that the road was vested in the local authority only for the purposes of a road, and that they had no right to the subsoil, and, consequently, that no injunction could be granted (*Poplar Corporation* v. *Millwall Dock Co.* (1904), 68 J. P. 339).

By s. 26 of the Public Health Act, 1875, a penalty is imposed upon any person who, in any urban district, without the written consent of the urban authority "causes any vault, arch, or cellar to be newly built or constructed under the carriage-way of any street," and authorises the urban authority to cause any such structure to be pulled down or otherwise dealt with. The defendants, being lessees of land on both sides of and adjoining a certain street, made an arched concrete tunnel under the street for the purpose of laying pipes conveying electrical mains across the floor of the tunnel. Afterwards they changed their minds and dug through the concrete floor and laid the pipes in the clay below the concrete. Afterwards the defendants removed the top of the arch of the tunnel and filled up the tunnel with ballast and concrete. In an action at the instance of the urban council for a declaration that they were entitled to cause the arch to be removed, FARWELL, J., held, on the evidence, that the tunnel might be removed without interfering with the pipes, and in a cross action at the instance of the defendants he granted an injunction against interference with the pipes. (*Walker U. D. C.* v. *Wigham, Richardson & Co., Ltd.; Wigham, Richardson & Co., Ltd.* v. *Walker U. D. C.* (1902), 66 J. P. 152).

The Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), which applies to the administrative county of London, by s. 44 authorises sanitary authorities to provide and maintain public lavatories and ashpits and public sanitary conveniences, etc., in situations where they deem the same to be required, and for this purpose enacts that "the subsoil of any road, exclusive of the footway adjoining any building, or the curtilage of a building, shall be vested in the sanitary authority." Where a sanitary authority under the powers of this Act constructed public sanitary conveniences in the subsoil of a street with underground approaches or subways having an entrance on both sides of the street by means of a staircase, with the result that it was possible for the public to use the subway as a means of passing from one side of the street to the other, it was held by the House of Lords (reversing the decision of the Court of Appeal), that the discretion of the sanitary authority could not in the circumstances be interfered with (*Westminster Corporation* v. *L. & N. W. Rail. Co.*, [1905] A. C. 426).

A local authority erecting underground lavatories are liable to the land tax in respect thereof (*Westminster Corporation* v. *Johnson; Same* v. *Fuller*, [1904] 2 K. B. 737).

A local authority, by a special Act which incorporated the Lands Clauses Acts, were authorised to erect and maintain "on in over or under" any street in which their tramways were laid, posts for the purpose of working the tramways by electrical power. They erected a post which was sunk to a depth of six feet in the pavement forming part of a street. The pavement and the soil beneath it at that spot were the property of the plaintiff, subject to a right which had been acquired by the public to use the pavement as a public footpath. The local authority gave no notice to treat, and did not obtain the consent of the plaintiff before erecting the post:—*Held*, that the erection of the post was authorised by the special Act, and that it was not necessary to give notice to treat to the plaintiff (*Escott* v. *Newport Corporation*, [1904] 2 K. B. 369).

See further as to the rights of action of a local authority in respect of a street vested in them, *Lodge Holes Colliery Co., Ltd.* v. *Wednesbury Corporation*, [1908] A. C. 323.

By the Act of incorporation of a Canadian company, it was declared that the company "may lay its wires . . . . underground as the same may be necessary and in so many streets squares highways lanes and public places as may be deemed necessary for the purpose of supplying electricity and gas for light power and heating, the whole however without doing any unnecessary damage and providing all proper facilities for free passage through the said streets squares highways lanes and public places while the works are in progress":—*Held*, by the Privy Council, that the power to break up the surface of streets, and to excavate them for the purposes above stated, was plainly involved, and that an injunction obtained by the respondents to restrain the municipality from interfering therewith was properly granted (*City of Montreal* v. *Standard Light and Power Co.*, [1897] A. C. 527).

Effect of vesting sewers in local authorities.

By the Oldham Borough Improvement Act, 1865 (28 & 29 Vict. c. cccxi.), several Acts, and amongst them certain provisions of the Public Health Act, 1848, affecting the improvement of the borough, were reduced into one Act, and by s. 59 all the sewers were vested in the corporation. It was decided that this section conferred an absolute property in that part of the subsoil occupied by any sewer, and not merely an easement or right of sewerage (*Taylor* v. *Corporation of Oldham* (1876), 4 Ch. D. 395). See also *Ystradyfodwg and Pontypridd Main Sewerage Board* v. *Benstead*, [1906] 1 K. B. 294; affirmed in H. L., [1907] A. C. 264; *Pemsel and Wilson* v. *Tucker*, [1907] 2 Ch. 191. As to the question of support of sewers, see Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883, and the note to s. 1 thereof, *post*.

As to the ownership of the *solum* of the towing path made by canal companies or conservators of a river navigation, see *Conservators of River Lee Navigation* v. *Button* (1881), 6 App. Cas. 685; and as to the dedication of such towing paths as public highways, see *R.* v. *Leake* (1833), 5 B. & Ad. 469; and *Grand Junction Canal Co.* v. *Petty* (1888), 21 Q. B. D. 273.

Where a gas or water company, local authority, or others, having a statutory right to break up streets, employ a contractor to do the work, a duty may remain on them towards the public to prevent damage arising from the execution of the work. See the cases on this subject collected *ante*, at p. 170.

The pipes of a water company once laid can only be interfered with by

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other parties when acting in pursuance of statutory authority. Thus local authorities are empowered by the following section of the Public Health Act, 1875 (38 & 39 Vict. c. 55):

Power to require gas and water pipes to be moved.

> 153. Where for any purpose of this Act any urban authority deem it necessary to raise, sink, or otherwise alter the situation of any water or gas pipes mains plugs or other waterworks or gasworks laid in or under any street, they may by notice in writing require the owner of the pipes mains plugs or works to raise sink or otherwise alter the situation of the same in such manner and within such reasonable time as is specified in the notice; the expenses of or connected with any such alteration shall be paid by the urban authority; and if such notice is not complied with the urban authority may themselves make the alteration required:
>
> Provided—
>
> That no such alteration shall be required or made which will permanently injure any such pipes mains plugs or works or prevent the water or gas from flowing as freely and conveniently as usual; and
>
> That where under any local Act of Parliament the expenses of or connected with the raising sinking or otherwise altering the situation of any water or gas pipes mains plugs or other waterworks or gasworks, are directed to be borne by the owner of such pipes or works, his liability in that respect shall continue in the same manner and under the same condition in all respects as if this Act had not been passed.

The Burgh Police (Scotland) Act, 1892 (55 & 56 Vict. c. 55), contains similar powers (s. 149), but s. 149 has been amended by the Burgh Police (Scotland) Act, 1903, s. 104, and Schedule, so as to apply only to pipes in any new street.

Railway companies also are authorised to interfere with the mains and pipes of a water company. Section 18 of the Railway Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), authorises them, for the purpose of constructing the railway, to raise, sink, or otherwise alter the position of water pipes, "so as the same respectively be done with as little detriment and inconvenience to such company . . . . as the circumstances will admit." It must be done under the superintendence of the water company if they think fit to attend after receiving not less than forty-eight hours' notice. They may not remove or displace any mains or pipes (other than private service pipes), syphons, plugs, or other works belonging to a water company, until they have laid down others in lieu thereof (s. 19). They may not lay down any such pipes contrary to the regulations of the water company's Act, nor leave a covering of less than eighteen inches from the surface of the road over such mains or pipes (s. 20). They must make good all damage done to the property of the water company, and make "full compensation to all parties for any loss or damage which they may sustain by reason of any interference with the mains, pipes," etc. (s. 21). Where railway works are carried over any mains or pipes of a water company, the railway company are bound at their own expense to construct and maintain a sufficient culvert (s. 22). If the railway company by any such operations interrupt the supply of any water they are liable to a penalty of twenty pounds for each day (s. 23). Furthermore, in making the railway the company cannot deviate from the levels beyond the limits fixed by s. 20 without the consent of, amongst others, any water company whose works are affected by such deviation. In making a railway, the levels shown upon the deposited plans cannot be deviated to a greater extent than five feet (or in towns, villages, or land continuously built upon, two feet) without the previous consent of owners, occupiers, and others, including water companies affected by such deviation. See ss. 11 and 12 of 8 & 9 Vict. c. 20; and *cf.* s. 4 of 26 & 27 Vict. c. 92.

The Telegraph Act, 1863 (26 & 27 Vict. c. 112), gives powers similar to those contained in the Railways Clauses Act. The provisions of this Act are extended by the Telegraph Act, 1892 (55 & 56 Vict. c. 59), s. 8, to "pneumatic and other tubes used for the purpose of transmitting telegraphic messages or maintaining telegraphic communication." The Tramways Act, 1870 (33 & 34 Vict. c. 78), s. 30, gives power to a tramway company to interfere with gas or water pipes, subject to certain restrictions, as to which, see *ante*, p. 176. See also the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s, 15, and the elaborate provisions on this subject contained in ss. 17, 18 of the schedule to the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19).

The Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), also confers certain powers with reference to interference with water pipes, as to which see ss. 61, 62; and by s. 13 provision is made for a plan, showing the course of pipes, being prepared and kept.

As to the metropolis, see *ante*, p. 179.

Not to enter on private land without consent.

29. Provided always, that nothing herein contained shall authorise or empower the undertakers to lay down or place any pipe, conduit, service pipe, or other work in any land not dedicated to public use without the consent of the owners and occupiers thereof, except that the undertakers at any time may enter upon and lay or place any new pipe in the place of an existing pipe in any land wherein any pipe hath been already lawfully laid down or placed in pursuance of this or the special Act, or any other Act of Parliament, and may repair or alter any pipe so laid down.

See *Glasgow Corporation* v. *Glasgow and S. Western Rail. Co.*, [1895] A. C. 376; *Caledonian Rail. Co.* v. *Glasgow Corporation*, (1901), 3 Fraser, 526; and *Taff Vale Rail. Co.* v. *Cardiff Gas, Light and Coke Co.* (1907), 71 J. P. 350; cited at p. 180, *ante*; and see notes to s. 7 of Gasworks Clauses Act, 1847, *ante*, p. 163.

A public footpath, although not repairable by the inhabitants at large, is "land dedicated to public use" within the meaning of this section, so that pipes in connection with authorised works can be laid without the consent of the owner of the soil (*Marriott* v. *East Grinstead Gas and Water Co.*, [1909] 1 Ch. 70).

Where a local authority under the provisions of the Public Health Act, 1875 (38 & 39 Vict. c. 55), supply water to their district, they have the same powers in regard to water mains as they have with regard to sewers, and the definition of "street" under that Act is wide enough to include a private road. Accordingly, where without any notice to the plaintiff, and without any consent on his part, a local authority commenced to break up a private road of the plaintiff's situated within their district, for the purpose of laying water mains, and the plaintiff brought an action claiming an injunction, the Court of Appeal held that the plaintiff's private road was a "street" under the Act of 1875, and that ss. 16 and 54 of that Act empowered the defendants to do what they did (*Hill* v. *Wallasey L. B.*, [1894] 1 Ch. 433).

A local authority in Scotland, in pursuance of the Public Health (Scotland) Acts, agreed with the owner of certain private land to lay fireclay pipes therein for the purposes of bringing in a water supply and paid the agreed money compensation. Finding the clay pipes inefficient, they subsequently laid down iron pipes in the same line without removing the fireclay pipes. The court refused to interdict the local authority, holding that the operations were in the nature of repairs to the existing pipes, and that the landowner could suffer no damage from the fireclay pipes being allowed to remain (*Bridges* v. *Police Commissioners of Fraserburgh* (1887), 25 S. T. R. 151).

Notice to be served on persons having control, etc.,

30. Before the undertakers open or break up any street, bridge, sewer, drain, or tunnel, they shall give to the persons under whose control or management the same may be, or to their clerk, surveyor, or other officer, notice in writing of their intention to open or break

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before breaking up streets or opening drains.

up the same, not less than three clear days before beginning such work, except in cases of emergency arising from defects in any of the pipes or other works, and then so soon as is possible after the beginning of the work or the necessity for the same shall have arisen.

See notes to s. 8 of Gasworks Clauses Act, 1847, *ante*, p. 182.

Streets or drains not to be broken up except under superintendence of persons having control of the same.

31. No such street, bridge, sewer, drain, or tunnel shall, except in the cases of emergency aforesaid, be opened or broken up, except under the superintendence of the persons having the control or management thereof, or of their officer, and according to such plan as shall be approved of by such persons or their officer, or in case of any difference respecting such plan, then according to such plan as shall be determined by two justices; and such justices may, on the application of the persons having the control or management of any such sewer or drain, or their officer, require the undertakers to make such temporary or other works as they may think necessary for guarding against any interruption of the drainage during the execution of any works which interfere with any such sewer or drain: Provided always, that if the persons having such control or management as aforesaid, and their officer, fail to attend at the time fixed for the opening of any such street, bridge, sewer, drain, or tunnel, after having had such notice of the intention of the undertakers as aforesaid, or shall not propose any plan for breaking up or opening the same, or shall refuse or neglect to superintend the operation, the undertakers may perform the work specified in such notice without the superintendence of such persons or their officer.

If persons having the control, etc., fail to superintend, undertakers may perform the work without them.

In the case of *Edgeware H. B.* v. *Colne Valley Water Co.* (1877), 46 L. J. Ch. 889, it appeared that the defendants had given the plaintiffs notice of their intention to open and break up the soil and pavement of certain roads within their limits, and to lay down their water pipes thereunder, and had indicated, on a large scale ordnance map, the line in which they proposed to lay their pipes. They had not, however, so indicated the position of their pipes as to enable the plaintiffs to judge whether they would be laid under the centre or either of the sides of the road, nor at what depth, or with what gradient, they would be laid; nor had they submitted any "plan" of their own for the approval of the plaintiffs; and they contended that they could not indicate the precise line until they actually commenced working, and that the "plan" referred to meant "method," or "manner" and not "map." Vice-Chancellor HALL, however, held that the position and depth of the proposed pipes ought to form part of the "plan" submitted by the defendants to the highway authorities under the above section, so as to enable them to judge whether what was proposed should be allowed to proceed, and was a plan which ought to be approved, or whether recourse should be had to the two justices; and no "plan" having been approved, and the defendants not having gone to the two justices, the Vice-Chancellor granted an injunction, the chairman of the highway board giving the usual undertaking as to damages. This case was approved of and followed in the Court of Appeal in *East Molesey L. B.* v. *Lambeth Waterworks Co.*, [1892] 3 Ch. 289, where it was held that the plan must be not merely of the "breaking up" of the road, but must also show the mode in which the underground work is intended to be executed, so as to enable the road authority to judge whether the proposed work ought to be done without modification. If the road authority after receiving such a plan do not, in case of disapproval, themselves make some counter-proposal by plan or otherwise, as to the mode of carrying out the work, so as to create a "difference" to be determined by two justices under the section, the

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company may proceed with the work independently of the road authority. As to when a plan can be considered as "approved, see *Yabbicom* v. *King*, [1899] 1 Q. B. 444. In that case a local authority were empowered to make byelaws for the regulation of buildings within their jurisdiction, and such byelaws were properly made and were in force. It was held that the local authority, though they had in fact approved the plans, had no power to do so in contravention of the byelaws. See also *In re McIntosh and Pontypridd Improvement Commissioners* (1892), 61 L. J. Q. B. 164; *Baxter* v. *Bedford Corporation* (1885), 1 T. L. R. 434; and *cf. Ayr Harbour Trustees* v. *Oswald* (1883), 8 App. Cas. 623.

Streets, etc., broken up, to be reinstated without delay.

32. When the undertakers open or break up the road or pavement of any street or bridge, or any sewer, drain, or tunnel, they shall with all convenient speed complete the work for which the same shall be broken up, and fill in the ground, and reinstate and make good the road or pavement, or the sewer, drain, or tunnel, so opened or broken up, and carry away the rubbish occasioned thereby, and shall at all times whilst any such road or pavement shall be so opened or broken up, cause the same to be fenced and guarded, and shall cause a light sufficient for the warning of passengers to be set up and kept there against, every night during which such road or pavement shall be continued open or broken up, and shall, after replacing and making good the road or pavement which shall have been so broken up, keep the same in good repair for three months thereafter, and such further time, if any, not being more than twelve months in the whole, as the soil so broken up shall continue to subside.

See note to s. 28, pp. 454 *et seq.*, and *East London Waterworks Co.* v. *St. Matthew, Bethnal Green* (1886), 17 Q. B. D. 475, cited *post*, p. 484.

See also the notes under s. 10 of the Gasworks Clauses Act, 1847, *ante*, p. 183.

Although there is power to sue a company for a penalty, they are liable to be sued for negligence in replacing a road, if such negligence results in injury to a person using the road (*Hartley* v. *Rochdale Corporation*, [1908] 2 K. B. 594).

Penalty for delay in reinstating streets, etc.

33. If the undertakers open or break up any street or bridge, or any sewer, drain, or tunnel, without giving such notice as aforesaid, or in a manner different from that which shall have been approved of or determined as aforesaid, or without making such temporary or other works as aforesaid, when so required, except in the cases in which the undertakers are authorised to perform such works without any superintendence or notice, or, if the undertakers make any unnecessary delay in completing any such work, or in filling in the ground, or reinstating and making good the road or pavement, or the sewer, drain, or tunnel, so opened or broken up, or in carrying away the rubbish occasioned thereby, or if they neglect to cause the place where such road or pavement has been broken up to be fenced, guarded, and lighted, or neglect to keep the road or pavement in repair for the space of six months next after the same is made good, or such further time as aforesaid, they shall forfeit to the persons having the control or management of the street, bridge, sewer, drain, or tunnel in respect of which such default is made a sum not exceeding five pounds for every such offence, and an additional

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sum of five pounds for each day during which any such delay as aforesaid shall continue after they shall have received notice thereof.

In case of delay, other parties may reinstate and recover the expenses.

34. If any such delay or omission as aforesaid shall take place, the persons having the control or management of the street, bridge, sewer, drain, or tunnel in respect of which such delay or omission shall take place may cause the work so delayed or omitted to be executed, and the expense of executing the same shall be repaid to such persons by the undertakers; and such expenses may be recovered in the same way as damages are recoverable under this and the special Act.

See hereon *Metropolitan Water Board* v. *Westminster Corporation*, and other cases decided with reference to reinstatement by local authorities in the metropolis, cited *ante*, pp. 184 *et seq.*

Supply of Water.

And with respect to the supply of water to be furnished by the undertakers, be it enacted as follows:

A constant supply of water to be kept for domestic purposes at high pressure.

35. The undertakers shall provide and keep in the pipes to be laid down by them a supply of pure and wholesome water, sufficient for the domestic use of all the inhabitants of the town or district within the limits of the special Act, who, as hereinafter provided, shall be entitled to demand a supply, and shall be willing to pay water rate for the same; and such supply shall be constantly laid on at such a pressure as will make the water reach the top story of the highest houses within the said limits, unless it be provided by the special Act that the water to be supplied by the undertakers need not be constantly laid on under pressure; and the undertakers shall cause pipes to be laid down and water to be brought to every part of the town or district within the limits of the special Act whereunto they shall be required by so many owners or occupiers of houses in that part of the town or district as that the aggregate amount of water rate payable by them annually, at the rates specified in the special Act, shall be not less than one-tenth part of the expense of providing and laying down such pipes; provided that no such requisition shall be binding on the undertakers, unless such owners or occupiers shall severally execute an agreement binding themselves to take such supply of water for three successive years at least.

In so far as this section applied to the Metropolitan Water Board, it was repealed by the Metropolitan Water Board (Charges) Act, 1907, which is set out *in extenso*, *post*, p. 684. See the Act for the substituted obligation imposed upon the Board.

Sect. 25 of the Metropolitan Act affords some guidance as to the meaning of "domestic purposes," but, although as regards the metropolis some of them may be now obsolete, all the cases upon the subject are still retained in the following note.

As to laying of communication pipes by inhabitants, see ss. 48 *et seq.*, *post*, p. 494.

For neglect or refusal to supply water to any "owner or occupier entitled under this or the special Act to receive a supply of water" the undertakers are liable to a penalty (s. 43, and *cf.* ss. 36, 44, and 53). The water rates are payable quarterly in advance (see further hereon the notes to s. 70, *post*). The owner or occupier does not become "entitled" until he has paid or tendered the water rate (s. 53). See *Sheffield Waterworks Co.* v. *Brooks*, cited *post*, p. 490. As to whether an action will lie, see the cases collected in the notes to s. 36

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of the Gasworks Clauses Act, 1871, *ante*, p. 241. For a case in which the householder provided no cistern and the water company turned off the water periodically for cleaning, see *Jackson* v. *Farnham Water Co.* (1887), 5 T. L. R. 632.

For a case under the above section, which turned primarily on the construction of certain local Acts, see *Bilston Urban District Council* v. *Earl of Dudley*, Jl. of G. L., May 17th, 1904, p. 453; affirmed C. A., Jl. of G. L., December 27th, 1904, p. 984.

Pure and wholesome water.

In the case of *Milnes* v. *Mayor, etc. of Huddersfield* (1886), 11 App. Cas. 511, the plaintiff sought to recover damages under this section in respect that water, otherwise pure and wholesome, became contaminated by passing through leaden service pipes. It appeared that by s. 66 of their special Act the defendants were entitled to prescribe the material to be used for service pipes, and they by their byelaws prescribed that the material might be either lead or cast-iron. "The material invariably used by the defendants for service pipes had been lead; and lead service pipes had been laid down to the plaintiff's house by the defendants on the application of the landlord and the plaintiff, without objection on the part of either to the material selected." See 10 Q. B. D. 125. The service pipes so laid became the property of the consumer and not of the defendants, notwithstanding a byelaw which provided that "the connecting pipes and works from the street main to the consumer's premises shall at all times be under the control and management of the corporation, and shall be deemed to belong to them. . . ." The water, which was pure and wholesome in the mains of the defendants, was supplied by them to the plaintiff, but in its passage from the mains through the service pipes it was contaminated by the lead, and he using the water suffered from lead poisoning. The action was brought for injuries sustained from impure and unwholesome water. Mathew, J., held that the plaintiff had no cause of action (10 Q. B. D. 124). The Court of Appeal unanimously affirmed this judgment (12 Q. B. D. 443). On appeal to the House of Lords the case was there twice argued. It was held that the obligation imposed by s. 35 was to supply water which was pure and wholesome in the mains; and by Lords Blackburn, Bramwell, Fitzgerald, Halsbury, and Ashbourne (the Earl of Selborne and Lord Watson dissenting), that having complied with that obligation the undertakers were not (negligence being out of the case) liable to the plaintiff in the action. By the Earl of Selborne and Lord Watson it was held that the defendants were liable, on the ground that the water contained some special and peculiar solvent of lead which made it poisonous after passing through leaden pipes, although that solvent might be absolutely inoperative and innocuous to anyone who might drink the water before it came in contact with lead (11 App. Cas. 511). It would appear to follow from the decision of the Divisional Court, in *Simpson* v. *South Oxfordshire Water Co.*, [1908] 1 K. B. 917, that an action will lie in respect of an impure supply of water. See also an article in 69 J. P. at p. 158, and *Frost* v. *Aylesbury Dairy Co., Ltd.*, [1905] 1 K. B. 608.

In an information and action by the Attorney-General on relation of Mayor, etc. of Tynemouth to restrain a statutory water company from supplying water pumped from a colliery on the ground that this was not an authorised source, and also that the water was impure, an injunction was granted (*Attorney-General* v. *North Shields Waterworks Co.*, Times, May 12th, 1892 [C. A.]).

See also *Attorney-General* v. *Rhymney, etc. Water Co.* (1907), 71 J. P. 435; *Attorney-General* v. *Pontypridd Waterworks Co.*, [1908] 1 Ch. 388.

In modern water Acts a clause is generally inserted enabling the local authority to supply in the event of the undertakers failing to furnish a sufficient supply after the lapse of a certain number of years. The following form is taken from the "Model Bills and Clauses," as amended, 1910:

Power to local authority, etc., to

> "If at any time after the expiration of *five* years from the commencement of this Act the *corporation* are not furnishing or prepared on demand to furnish a sufficient supply of water in accordance with the

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supply water in case company fails to supply.

provisions of this Act throughout the district of any local authority within the limits of supply, the local authority of such district may provide a supply in the whole or any part of their district within the limits of supply in accordance with the provisions of the Public Health Act, 1875, or any company, body, or person may apply for an Act of Parliament or provisional order for the purpose of supplying water in any part of such district not sufficiently supplied by the *corporation*, as if in either case *this Act* had not passed.

"If any difference shall arise between the *corporation* and any such local authority, company, body or person as to the sufficiency of the supply of water in any part of such district, such difference shall be settled by an arbitrator to be appointed on the application of either party by the [Local Government Board or Board of Trade according as the undertakers are a local authority or a company]."

What is "domestic use."

The term "domestic use" is nowhere defined in the Act. In 1858 the question arose whether water for a horse and for washing carriages came within domestic use. The Chesterfield Waterworks Company's Act required the company to furnish to occupiers of houses who should demand a supply of water "for domestic use" a sufficient supply thereof, at certain rents. The Act provided that "a supply of water for domestic purposes shall not include a supply of water for machinery, railways, or for any other trade or business whatsoever, or for watering gardens, or for fountains, or for any ornamental purposes whatsoever." The Act incorporated the Waterworks Clauses Act, 1847. An occupier was assessed upon his house and premises, including a coach-house, stable and yard. He kept for private use a carriage in the coach-house and a horse in the stable; and on the premises he applied, for the horse and for washing the carriage, water supplied by the company for domestic use; it was held by the Queen's Bench that he was entitled to do so, the water being within the meaning of the Act applied to domestic use; Lord CAMPBELL, C.J., remarking: "It seems to me that it does not at all matter whether the water was used for washing the appellant's own carriage or the go-cart of his children" (*Busby* v. *Chesterfield Waterworks and Gaslight Co.* (1858), E. B. & E. 176).

What is not included in "domestic purposes."

After the above decision, the Waterworks Clauses Act, 1863 (26 & 27 Vict. c. 93), s. 12, provided that "A supply of water for domestic purposes shall not include a supply of water for cattle, or for horses, or for washing carriages, where such horses or carriages are kept for sale or hire or by a common carrier, or a supply for any trade, manufacture, or business, or for watering gardens, or for fountains, or for any ornamental purpose." This Act only applies to waterworks to which any special Act thereafter passed and incorporating that Act relates (s. 2). It does not, therefore, apply to the case of undertakers who have not incorporated the Act of 1863. It is usually incorporated with Provisional Orders (Water) under the Gas and Waterworks Facilities Acts. It has recently been held that water supplied to and used by a medical man for washing a motor car and for other purposes in connection therewith, the motor car being used by him for the purposes of his profession, is not within the meaning of s. 12 of the Act of 1863 (*Harrogate Corporation* v. *Mackay*, [1907] 2 K. B. 611).

"Domestic use" and "domestic purposes."

There have been many decisions bearing on the subject of what is covered by the words "domestic use"; but special regard should be had in most of the cases, to the terms of the special Acts. It is not easy to give a comprehensive definition of what is "domestic use" or "domestic purpose." In the *Chesterfield Case* (1858), E. B. & E. 176, ERLE, J., said: "I do not find any definite line to mark the meaning of domestic use and purposes," and in *Low's Case*, cited *infra*, JESSEL, M.R., said: "Then the next question is, what 'domestic purposes' mean? I cannot tell exactly any more than Mr. Justice ERLE could. It may be defined roughly to include all the water that the occupiers of a house or a building in which they dwell, use for the health, comfort, and enjoyment of themselves apart from any trade or business purpose." But such a definition as this is qualified by s. 12 of the Waterworks Clauses Act, 1863, which defines what domestic purposes shall not include, and which is operative

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where that Act is incorporated with the special Act. But for that Act, domestic purposes would include water for "a cow in a cowstall within the curtilage, the milk being used for house purposes": *per* JESSEL, M.R., in *Low's Case.* In the *Chesterfield Case* Lord CAMPBELL said: "A supply of water for domestic purposes does include a supply of water for the carriage and horse of the appellant, considering that the carriage and horse were kept by the appellant for his private use, and were kept on the premises." In *Low's Case*, JESSEL, M.R., referring to that passage, said: "What distinction can be made between a horse so kept and a dog or cat or other animal upon the premises?" Domestic brewing and washing were considered to be domestic purposes by JAMES, L.J., in *Wilts and Berks Canal Co.* v. *Swindon Waterworks Co.* (1874), L. R. 9 Ch. 457. In the *Chesterfield Case*, Lord CAMPBELL further said that "it does not matter whether the water was used for washing the appellant's carriage or a go-cart for his children, which might be kept in an outhouse belonging to the premises." In *Low's Case*, JESSEL, M.R., said as regards baths that "they might possibly be included" in domestic purposes; but this is a matter which is now specificially dealt with in all special Acts of recent years. The North-Eastern County School, Barnard Castle, was a charity administered under a scheme settled by the Charity Commissioners in 1882. Under this scheme the school was not carried on for profit. There were 300 boarders and 50 day boys. The governors constructed a swimming bath for the use of the boys. A swimming master was appointed to teach the boys swimming, and a fee was charged for the use of the bath. The fee was compulsory in the case of the boarders, and was charged to such only of the day boys as used the bath. The Court of Appeal held, on the facts, that the water was not required for domestic purposes, and that the bath was really constructed and was required for the purposes of the business of the school, and not for domestic purposes of the school considered as the *domus* or home of the boys. VAUGHAN WILLIAMS, L.J., doubted, but assented to the appeal being allowed on the ground that the bath was used for the purpose of making the teaching of the school more effectual, and not for the purpose of making the occupation of the house more convenient. But he stated that he did not intend to decide that a supply of water to a swimming bath was necessarily in every case a supply for non-domestic purposes" (*Barnard Castle U. D. C.* v. *Wilson*, [1902] 2 Ch. 746). The judgments in this case should be referred to for the tests to be applied in determining whether or not a supply is for "domestic purposes." Since the last-mentioned decision it has in some Acts been specially provided that water for domestic purposes shall not include water for swimming baths (see, *e.g.*, New Hunstanton Improvement Act, 1903 (3 Edw. 7, c. xcvi.). Water supplied to a house the occupier of which carries on therein the business of a lodging-house keeper, and used solely for the domestic purposes of himself and the boarders who are lodged and boarded in the house, is water for domestic purposes (*Pidgeon* v. *Great Yarmouth Waterworks Co.*, [1902] 1 K. B. 310).

A waterworks company's special Act provided that the company should, at the request of occupiers of houses, furnish them with a supply of water for domestic purposes at specified rates, but that the company should not be compelled to supply water to any dwelling-house otherwise than by agreement where any part of such house was used for any trade, manufacture, or business for which water was required. The company supplied water to the plaintiff's house, which was used as a boarding school. It was held that the keeping of the school was not carrying on a business for which water was required within the meaning of the special Act, and that the plaintiff was entitled to be supplied with water at the rate specified for the supply of water for domestic purposes (*Frederick* v. *Bognor Water Co.*, [1909] 1 Ch. 149; 72 J. P. 501).

See also *South-West Suburban Water Co.* v. *St. Marylebone Guardians* and *Chester Waterworks Co.* v. *Chester Union*, cited *post*, pp. 472, 473.

Water used for amateur photography was held by justices to be domestic (*Stockport Corporation* v. *Wright*, Jl. of G. L., November 19th, 1901, p. 1323). On a case stated the Divisional Court sent back the case to the justices to be more fully stated (see Jl. of G. L., April 29th, 1902, p. 1111).

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Clinkers produced in the furnaces of boilers belonging to an hotel used to generate steam for the purpose of supplying power for the electric lighting and for warming and cooking and other purposes of the hotel, are not refuse of a trade, manufacture, or business within the meaning of the 128th section of the Metropolis Management Act, 1855, and therefore the scavengers, under s. 125 of the Act, are bound to remove them without payment (*Vestry of St. Martin's* v. *Gordon*, [1891] 1 Q. B. 61).

In a case under s. 4 of the Boiler Explosions Act, 1882, and s. 2 of the Boiler Explosions Act, 1890, which except from the operation of those Acts boilers "used exclusively for domestic purposes," it was held that a boiler used to heat offices or business premises upon which the owner does not reside, and also to supply warm water for the purpose of cleaning the offices and for the household purposes of a resident caretaker was within the exception (*Smith* v. *Miller*, [1894] 1 Q. B. 192). See also the following cases as to the meaning of the expression "house refuse": *London and Provincial Laundry Co.* v. *Willesden L. B.*, [1892] 2 Q. B. 271; and *Westminster Corporation* v. *Gordon Hotels Co.*, [1906] 2 K. B. 39. See also the cases in the remainder of this note against the marginal notes, "Pleasure gardens," "Workhouse," "Baths," etc.

Pleasure gardens attached to dwelling-house.

Section 68 of the Bristol Waterworks Act, 1862 (25 & 26 Vict. c. xxx.), enacts that the company shall furnish to every occupier of a private dwelling-house within their limits a sufficient supply of water for the domestic use of such occupier, at certain annual rents or rates according to the "annual rack-rent or value of the premises supplied," such supply (by s. 71) not to include, among other things, a supply of water "for watering gardens by means of a tap, tube, pipe, or other such like apparatus;" and s. 32 of the Bristol Waterworks Amendment Act, 1865 (28 & 29 Vict. c. xxvi.), enacts that "if any dispute shall arise as to the amount of the annual rent or value of any dwelling-house or premises supplied with water by the company, such dispute shall be decided by two justices, provided that the amount of the annual rack-rent or value to be fixed by such justices shall not be less than the gross sum assessed to the poor rate, or less than the rent actually paid for such dwelling-house or premises." A dwelling-house and garden in the occupation of the owner were assessed to the poor-rate as follows: "Gross estimated rental, £240; rateable value, £204." It was proved that the value of the house without the garden would be 10 per cent. less, and that the owner contracted to pay, and did pay, £1 1*s.* annually for the watering by means of a pipe and tap in the garden which surrounded the dwelling-house, and was occupied and assessed therewith:—*Held*, upon a case stated by the justices, that the words "gross sum assessed to the poor rate" meant the "gross estimated rental," and not "rateable or net value;" and that the water rent was chargeable upon the gross estimated rental of "the premises," including the pleasure garden occupied with the house, and not merely upon the dwelling-house itself, the extra charge for the garden supply being for using a pipe and tap (*Bristol Waterworks Co.* v. *Uren* (1885), 15 Q. B. D. 637). In the course of a considered judgment, the court, on the first point, distinguished this case from that of *Dobbs* v. *Grand Junction Waterworks Co.* (1883), 9 A. C. 49, and held that the case of *Brown* v. *Richmond Waterworks Co.* (1883) (not reported) was well decided (p. 646); and on the second point they held that water used for the "mere amenities of the house, such as, in this case, the watering of the pleasure garden surrounding and attached to and occupied with the house, may legitimately and fairly be held to be used for domestic purposes within the meaning of the statute." . . . "It is, however, urged that in this case the consumer has contracted to pay, and does pay, 21*s.* per annum for watering his garden by means of a special tap, as is provided for by s. 71 of the Bristol Waterworks Act, 1862. This is so; but it does not seem to us that this fact should alter the area upon which, and consequently the amount upon which, the water rent should be assessed. If a consumer desires to use such an amount of additional water as a special tap, tube, or pipe will supply, there is nothing, as it seems to us, unreasonable in holding that he should pay for such accommodation in excess of what he would otherwise pay." The correct title of the unreported case referred to is not *Brown* v. *Richmond*

Waterworks Co., but *Brown* v. *Bristol Waterworks Co.*, under which title it will be found reported in the Jl. of G. L. for May 29th, 1883, vol. 41, p. 972. It came before the Queen's Bench Division on a case stated, and turned on s. 32 of the Bristol Act of 1865 above quoted. The contention there was, as in *Uren's Case*, that the words of the Act, "provided that the annual amount of rack-rent or value to be fixed by the justices shall not be less than the gross amount assessed to the poor rate or less than the rent actually paid for such dwelling-houses or premises," really meant in effect the same thing as "rateable value"; but the court rejected this contention. The case of *Low* v. *Lambeth Waterworks Co.*, which is referred to in the judgment in *Uren's Case*, is unreported, but the judgment of JESSEL, M.R. (as transcribed from the shorthand writer's notes), will be found in Cripps' "Position of the London Water Companies," pp. 113—121. The facts of this case appear to be as follows:—The Lambeth Waterworks Act, 1848 (11 & 12 Vict. c. vii.), by s. 39 provided that "A supply of water for domestic purposes shall not include a supply of water for baths, horses, cattle, or for washing carriages, or for any trade or business whatever," nothing being said in this section as to water for gardens. The question was whether such water for a garden attached to the plaintiff's house came within "domestic use." The plaintiff sought a mandatory injunction to compel the water company to supply his house and garden with water. JESSEL, M.R. (following the earlier case of *Weale* v. *West Middlesex Waterworks Co.* (1820), 1 Jac. & W. 358), held that mandatory injunction was not the proper remedy, assuming the plaintiff to be entitled to have the water. In the course of his judgment the learned judge examines the arguments for and against the contention that water for a garden came within "domestic use." In conclusion, he said, "It may be very difficult, and I am not bound to define the term—I am only asked whether it does or does not include a specific thing—and looking at the whole of the Act together, I think (although, as I said before, I do not pretend to say that other people may not think otherwise, and may legitimately and fairly think otherwise) that 'domestic purposes' in this particular Act of Parliament does not include watering gardens." To this case, SMITH, J., several times referred in his judgment in *Uren's Case*. He said (p. 648): "Section 71 of the Bristol Waterworks Act, 1862, seems to us to contemplate that the supply of water to a private dwelling-house for some garden purposes might well be considered as for domestic use; for it therein enacts what shall not be considered as domestic purposes; though, as was pointed out by Sir GEORGE JESSEL in *Low* v. *Lambeth Waterworks Co.*, every purpose not enumerated in that section cannot be considered a domestic purpose. The case of *Busby* v. *Chesterfield Waterworks Co.* shows that, upon the statute then in question, water used for washing a private carriage, and watering a private carriage horse, may well be considered as a domestic use; the court in that case would not adopt the argument that 'domestic use' meant solely the use by the family for the consumption and cleanliness of those resident within the house. In *Low* v. *Lambeth Waterworks Co.*, Sir GEORGE JESSEL held that the word 'house' in that Act meant the tenement supplied with water, and not merely the house itself." *

The Grand Junction Waterworks Act, 1852 (15 & 16 Vict. c. clvii), s. 46, provides that a supply of water for domestic purposes shall not include water "for gardens." On an application under s. 68 of the Waterworks Clauses Act, 1847, to determine a dispute as to the value of a tenement supplied with water, consisting of a dwelling-house and garden with outhouses, occupied as a residence, and comprising about half-an-acre, the justices found as a fact that a portion of the garden might be separately let, and being of opinion that, in arriving at the annual value of the tenement supplied with water they had to determine what quantity of garden should reasonably go with the house, they held that the annual value was the value of the premises exclusive of such portion as might be separately let. On a case stated:—*Held*,

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* The Bristol Water Act, 1865 (28 & 29 Vict. c. xxvi.), by s. 2 incorporated the Waterworks Clauses Act, 1863, and s. 12 of the latter Act enacts that a supply for domestic purposes shall not include a supply of water for watering gardens. This fact does not appear to have been referred to in the course of *Uren's Case*.

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that the justices had no jurisdiction to exclude that portion of the garden, and the assessment must be raised to the annual value of the whole of the premises as occupied (*Grand Junction Waterworks Co.* v. *Davies*, [1897] 2 Q. B. 209). In the course of this case, HAWKINS, J., said: "The reported cases mentioned to us in the course of the argument do not throw much light on the question immediately before us, still, they may be usefully referred to. In *West Middlesex Waterworks Co.* v. *Coleman* (1885), 14 Q. B. D. 529, the question was, whether, where water was supplied for domestic purposes to a house occupied as a licensed public-house, the licence should be taken into consideration; the company contended that the annual value of the premises as a licensed public-house should be taken as a basis for the water rate, and therefore the fact that the premises were licensed should be taken into consideration, and that the rate should not be based on their value for domestic purposes only, but as they stood, and occupied as they were; and this contention was held to be correct. In *Bristol Waterworks Co.* v. *Uren* (1885), 15 Q. B. D. 637, A. L. SMITH, J., intimated the view of himself and MATHEW, J., to be, that a garden forming part of the amenities of a dwelling-house, and occupied with it, should be treated as added to the house in assessing the value of the house. In this I entirely agree. In the latter case, the case of *Low* v. *Lambeth Waterworks Co.* (not reported), decided by Sir GEORGE JESSEL, M.R., in July, 1875, was referred to, but it does not seem to have been reported in any of the regular reports. We think, therefore, the justices were wrong, and the assessment must be raised to £100."

Supply to a workhouse.

In *Liskeard Union* v. *Liskeard Waterworks Co.* (1881), 7 Q. B. D. 505, the facts were that by the Liskeard Waterworks Act, 1860 (23 & 24 Vict. c. xiii.), (which incorporated the general Act of 1847), the company were by s. 33 bound to supply water "for domestic purposes" at a minimum rate, to be increased if any house *should be occupied* by more than one family. Section 34 provided that "a supply of water for domestic purposes as aforesaid shall include a supply for one water-closet in each such house, but shall not include a supply of water for railway purposes, or for baths, washhouses, or public purposes . . . ." The Liskeard Poor Law Union comprised twenty-three parishes, and the average number of inmates in the workhouse was 160. For this workhouse, the guardians, in accordance with the Act of 1847 and the special Act, required a supply of water "for domestic purposes." The company refused to furnish the supply, contending that the water required for such a place was "for public purposes." They also contended that the inmates of the workhouse did not constitute one family within the meaning of s. 33, but that the workhouse was occupied by various persons who constituted distinct families. The court decided that the water was required for domestic, and not for public purposes, and also that the paupers of the workhouse were one family within the meaning of the statute, Lord COLERIDGE, C.J., observing: "Every large family is partly made up of persons quite unconnected by ties of blood or marriage, and the number of those so connected may bear a very small proportion to the whole number of persons collected together, as, for instance, in the case of a school, where a number of persons of different families are collected from different places, but under one head, and one roof, and are for all practical purposes one family."

In *South West Suburban Water Co.* v. *St. Marylebone Union*, [1904] 2 K. B. 174, BUCKLEY, J., decided (1) that a school erected and maintained by the Guardians of the St. Marylebone Union for the education of children from the workhouse of the parish was a dwelling-house within the meaning of the Waterworks Clauses Acts, 1847 and 1863; (2) that the work carried on there was a business; and on this point he cited *Rolls* v. *Miller* (1884), 27 Ch. D. 71 (decided upon the construction of a covenant); but he further held that although that which was carried on upon the premises was a business, it was, in his opinion, perfectly consistent, that in business premises water might be wanted for domestic purposes." The guardians demanded a supply of water for domestic purposes but refused to comply with the regulations lawfully made by the water company. It was held that they were not entitled to the supply until they had complied with the regulations. Water had been used at the school for the following purposes, as to which the learned judge gave his opinion upon the question of whether the supply came under the head of domestic purposes, viz.: (*a*) garden and greenhouse supply. It was held that this was governed by s. 12 of the Act of 1863. (*b*) Automatic flushing cisterns with a continuous action by day and by night. It was held that the water, though taken for domestic purposes was taken in a manner and to an extent contrary to the regulations. (*c*) A continuous and continually running supply for urinals. The learned judge applied the same observations as under (*b*). (*d*) Hydrants, intended for purposes of fire but used for washing purposes by attaching a hose and washing the yards and baths of the premises. This was held to be a domestic purpose, but was in breach of a regulation. (*e*) Three large Lancashire boilers used (1) for heating water for warming the building by circulation. This was held to be a domestic purpose; (2) for purposes of power to drive machinery of two classes, viz.: machinery used in the laundry for pumping, and pumping machinery for raising water from certain wells. It was held that the supply for purposes of power was not a domestic purpose. The question of whether a customer could be limited under s. 50 (*post*, p. 494) of the Act of 1847 to one service pipe of half-inch bore, also arose in this case. It appeared that the water company had made regulations which permitted the use of a pipe of three-quarters of an inch bore. The learned judge on this point said "as regards the bore of the service pipe, s. 50 of the Act of 1847 provides that it shall not exceed the prescribed limits, and where no limit is prescribed shall not exceed half an inch, except with the consent of the undertakers. No. 12 of the plaintiffs' regulations allows a bore of half an inch or three-quarters of an inch for the service of a supply for domestic purposes. The defendants are, I think, entitled (if and when they put themselves in a position to take a domestic supply) to use a pipe of three-quarters of an inch bore, but not a larger bore without the plaintiffs' consent. I find nothing to limit them to one such pipe. They are entitled to so many pipes of a bore of three-quarters of an inch as are necessary for obtaining a sufficient supply within s. 53 of the Act of 1847." Notice of appeal was given in the case, but the appeal was afterwards abandoned. See also *Dublin Corporation* v. *South Dublin Guardians*, *post*, p. 495.

By the Chester Waterworks Act, 1857, s. 43, the water company were bound to supply water to dwelling-houses in their district for domestic purposes at certain rates based on the annual value of such dwelling-houses, and by s. 47 they were bound to supply water for other than domestic purposes at such rate and upon such terms and conditions as might be agreed upon, or, failing agreement, upon such terms as might be determined by two justices, provided that the supply for domestic purposes should not be in any way interfered with or endangered. By the Chester Waterworks Act, 1874, s. 22, "no person shall be entitled to require nor shall the company be bound to supply any dwelling-house with water (otherwise than by meter or special agreement) where any part of such dwelling-house is used for any trade or business for which water is required." The Chester Guardians maintained a workhouse where water was used for boilers, for purposes of power to engines for driving ventilating and drying fans, for wringer and washing machines, and to drive a donkey-engine for pumping rain-water; for watering pigs and washing piggeries, the pigs being kept primarily to consume refuse, but such pigs being also fed with meal and sold when fattened; for engines used to heat a shed where wood was chopped, such wood being sold; for watering vegetable and flower gardens, and heating greenhouses; for heating infirmary, surgery, mortuary and chapel; for flushing waterclosets and for ordinary drinking, washing, and sanitary purposes for the inmates and others in the workhouse:—*Held*, that the guardians did not use any part of the workhouse for any trade or business for which water was required, and that therefore, s. 22 of the Act of 1874 did not apply; that the guardians were entitled to a supply of water for domestic purposes at the domestic rate, and a separate supply for non-domestic purposes, at a rate and upon the terms and conditions to be agreed upon or determined by two justices as provided by s. 47 of the Act of

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1857; but that the guardians were not entitled to require the company to supply the workhouse with water for purposes other than domestic purposes, unless and until they had agreed with the company as to the terms and conditions of such supply or, failing agreement, the terms and conditions had been determined by two justices as provided for by s. 47 of the Act of 1857, and they had made provision for the segregation of the two supplies (*Chester Waterworks Co.* v. *Chester Union* (1908), 72 J. P. 121; 98 L. T. 701).

Baths.

In the *Sheffield Waterworks Co.* v. *Bingham* (1880), Jl. of G. L., November 16th, 1880, vol. 36, p. 769, it appeared that the company's special Act of 1853 provided, by s. 79, that the company were "required to furnish a sufficient supply of water to every inhabitant occupying a private dwelling-house." Section 81 provided that in certain cases (among others) "persons requiring a supply of water for baths, ponds, or pools, or closets . . . such supply shall be furnished" at certain specified rates. Section 82 limited the rate chargeable in any one year in respect of waterclosets. The defendant had a fixed bath in his house, and claimed to be entitled to use the company's water for the bath as part of the domestic supply, and therefore without additional payment. JESSEL, M.R., decided that, on the construction of the above-mentioned sections, the company were entitled to additional payment for fixed baths and for waterclosets. The Court of Appeal, consisting of Lord SELBORNE, L.C., and BRETT and COTTON, L.JJ., affirmed the judgment (Jl. of G. L., July 19th, 1881, vol. 38, p. 129). See a later case of *Sheffield Waterworks Co.* v. *Bingham*, cited *infra*, p. 476. In *Weaver* v. *Corporation of Cardiff* (1883), 48 L. T. 906, the facts were that the Cardiff Waterworks Act of 1853 required the company to "furnish a sufficient supply of water for their domestic uses." Section 43 provided that: "A supply of water for domestic purposes as aforesaid . . . shall not include a supply of water for railway purposes, or for baths, washhouses, or public purposes . . . ." The plaintiff had a fixed bath in his house. The company demanded, in addition to the ordinary water rate, an extra charge for the supply to this bath, on the ground that a supply for such a purpose was not a supply for domestic purposes within the meaning of the Act. A divisional court decided that it was; FIELD, J., observing: "It seems to me that the word 'baths' must, with reference to the context, be taken to mean a public establishment of baths and washhouses, and that the public purposes should be read as meaning other public purposes. The respondents relied by analogy upon a case of the *Sheffield Waterworks Co.* v. *Bingham* (1880) [not then reported, but now see 25 Ch. D. 446 n], which was a decision of the Court of Appeal upon the construction of another private Act. It is sufficient to say that the words of the private Act in that case are not similar to those in the present. It is, therefore, distinguishable. I am, therefore, of opinion, upon a true construction of this Act, that a supply of water to a bath, although fixed, is included in the supply of water for domestic purposes, and that the plaintiff, therefore, was not liable to pay the extra charge which the defendants sought to impose upon him." This decision was not followed by CHITTY, J., in *Walker* v. *Lambeth Waterworks Co.* (1894), 63 L. J. Ch. 874. The company in this case were required by their Act of 1848 to furnish a sufficient supply for "domestic uses," and by s. 39 it was provided that "a supply of water for domestic purposes shall not include a supply of water for baths, horses, cattle, or for washing carriages, or for any trade or business whatsoever." It was held that the word "baths" included a fixed bath, and was not to be interpreted as confined to public baths.

Supply to a warehouse.

The case of *Cooke* v. *New River Co.* (1889) turned upon the construction of four sections (ss. 35, 38, 40, and 41) of the New River Act of 1852, as to which it was observed by Lord HERSCHELL, L.C.: "It has been my lot to attempt to construe many Acts of Parliament which were obscurely worded, but I do not think I ever met with one upon which it was more impossible to put a satisfactory construction than the statute with which we have to deal in the present case." The case related to a water supply to a warehouse used for storing carpets, and in which no one slept or took his meals, though about fifty persons were employed between the hours of

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business from 8 a.m. to 8 p.m. Until shortly before the commencement of the litigation the company supplied water to the premises by two pipes. One pipe was for working the hydraulic lift, and the water was supplied by meter, under an agreement of November, 1871, between the plaintiffs and the company. The other pipe supplied water for drinking purposes, and for the purpose of being used in urinals, water-closets, and washhand basins and for washing the house. There was no meter on this pipe, and the plaintiffs were charged according to the rateable value of the premises. In 1886 the plaintiffs gave notice to the company to determine the agreement of November, 1871, and called upon the company to supply the premises with water for all purposes by meter. This the company refused to do, contending that for the lift the plaintiffs were not entitled to water except by agreement, and that for water supplied for water-closets, lavatories, and washing, being domestic purposes, the company were entitled to be paid according to the annual value of the house as a dwelling-house. The plaintiffs brought this action, claiming a declaration that they, as consumers of water supplied by the defendants, were entitled to have water supplied by meter for working the lift, and also for all other purposes in connection with the premises. In the court of first instance, KEKEWICH, J., decided (36 Ch. D. 641)—(1) That such a warehouse was not a dwelling-house within the meaning of s. 35, and that the company could not insist on charging according to the rateable value of the warehouse for water supplied to it for domestic purposes; and (2) that the company were obliged to supply to such a warehouse water for domestic purposes and also for the hydraulic lift, charging for the water by meter according to s. 41. The Court of Appeal reversed this decision (38 Ch. D. 56), holding that a person requiring a supply of water for domestic purposes, and also for purposes for which no rate is fixed by the Act of 1852, is not entitled, under s. 41, to require the company to supply by meter the water for domestic purposes as well as the water for other purposes. An opinion was expressed (though it was not necessary to be decided) that any house in which water was required for domestic purposes, or for any other purposes for which rates were fixed by the special Act, was a "dwelling-house" within the meaning of the Act. In the House of Lords (14 App. Cas. 698) the decision was affirmed, but on the very special ground that the plaintiff was not a "consumer of water" within the meaning of s. 41. See the sections set out in 36 Ch. D., at pp. 642, 643 n.

Sect. 12 of the Waterworks Clauses Act, 1863, does not exclude premises even if occupied purely for "business" purposes, and in which no one or only a caretaker sleeps, from the right to have a supply for "domestic purposes," such as for supplying hand-basins or flushing water-closets (see *South-Western Suburban Water Co.* v. *St Marylebone Union*, [1904] 2 K. B. 174, per BUCKLEY, J., at p. 179).

Supply by meter for baths.

By the Sheffield Waterworks Act, 1853 (16 & 17 Vict. c. xxii.), s. 79, the company were required "to furnish a sufficient supply of water to every inhabitant occupying a private dwelling-house, or part of a dwelling-house," and were authorised to charge therefor certain rates calculated upon the rent. Sect. 81 provided that in the case of persons requiring a supply of water for baths such supply should be furnished by the company at a rate not exceeding tenpence for every 1,000 gallons up to 500,000 gallons, and so on, which rate was by a later Act increased by 25 per cent. for a period ef twenty-five years. There was no section in the Act prescribing any method of measuring the quantity of water used. By s. 12 of the Company's Act of 1860, provision was made for the appointment of competent persons to be inspectors of meters, and consumers of water were rendered liable to a penalty for omission to remedy defects in their meters, notice of which should have been given by an inspector, and the company were empowered to make regulations for preventing the waste of water. The company had drawn up and circulated a scale of composition rates for water supplied to baths, varying according to the value of the house. The adoption of this scale by the consumer was optional and voluntary. Where the consumer preferred it the company also supplied meters. This Act gave rise to much

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litigation. In the first place it was contended by some consumers that "baths" in s. 81 meant public baths. That point having been decided against them in *Sheffield Waterworks Co.* v. *Bingham* (1880), Jl. of G. L., November 16th, 1880, vol. 36, p. 769, and 25 Ch. D. 446 n, the next point taken for the consumers was that the company were bound to fix meters at their own expense. In the case just cited, JESSEL, M.R., had held that the consumer was not bound to put up any meter, and that he might prove the quantity of water used without measurement, as by showing that a bath required so much and was used so many times a year. And in *Sheffield Waterworks Co.* v. *Carter*, and *Same* v. *Brooks* (1882), 8 Q. B. D. 632, CAVE and MATHEW, JJ., in a divisional court, held that a consumer was not bound to put up a meter at his own expense, or hire one from the company as a condition precedent to his right to require a supply of water for a bath. The foregoing cases were afterwards brought under review in *Sheffield Waterworks Co.* v. *Bingham* (No. 2) (1883), 25 Ch. D. 443. PEARSON, J., there held that the measurement of the water used could only be effected by some sufficient automatic self-registering meter or other instrument, or in some other equally accurate mode, and he further held that, upon the construction of the Acts, it was not correct to treat the company as supplying the water to the consumer, but that it was the consumer who was entitled to draw off from the main what water he required, and to fix pipes and apparatus at his own expense for the purpose of measuring the water so taken by him. The learned judge guarded his judgment by saying: "I do not intend to decide that a meter is necessary . . . I am not going to decide that any particular meter should be used. . . . All I am going to decide is that Mr. Bingham must at his own expense measure the water and record that measurement, and that he must give, of course, all facilities to the company to ascertain that he has measured the water, and that he has measured it in some way or other which is an accurate way of taking the measurement." This decision was not appealed from. The rights and obligations of the parties having been thus established, it is believed some few persons elected to take their bath supplies by meter, but that the great majority accepted the company's composition rates. The decision in the last-mentioned case was followed in *Dublin* (*Corporation of*) v. *Bray Commissioners*, [1900] 2 I. R. 88.

In 1887, under the Sheffield Corporation Water Act, 1887 (50 & 51 Vict. c. clxxviii.), the Sheffield Corporation purchased the undertaking of the water company.

In a case decided in 1829 it appeared that a tenant, acting as if he were the owner of a house, made a contract with a water company to supply the premises with water at the basement story. In his absence from London his men, in order to save themselves the labour of pumping, secretly had a pipe put on the company's high service pipe so as to draw off the water at a higher level and in greater quantities than were agreed for. In this way the company were injured in respect that water was obtained in greater quantities than was agreed for, and at a higher level. When sued for damages the tenant set up that he was not the owner of the house, and that he had not authorised the act of his men; but under the circumstances, Lord TENTERDEN, C.J., held that he must have known of what had been done, and, therefore, must be considered as having adopted it, and, therefore, that he was liable in damages to the water company (*West Middlesex Waterworks Co.* v. *Suwerkrop* (1829), 4 C. & P. 87).

A corporation obtained parliamentary power to collect all the water from the gathering grounds of a certain district, but became bound by their Act to supply to a neighbouring township not less than 25,000 gallons, nor more than 75,000 gallons of water per day, at the price of sixpence per 1,000 gallons, and the amount to be supplied between the maximum and minimum limits was to be at the option of the township. It was held that the township in question might enforce the supply of more than 25,000 gallons per day for the purpose of selling a part of it, at a profit, to another township (*Corporation of Halifax* v. *Upper Soothill L. B.* (1874), 31 L. T. (N.S.) 6).

Pressure.

The statutory requirements as to the supply of water at pressure contained in s. 35, *supra*, do not apply to the supply of water in bulk, and the duty of

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the waterworks company ends with the supply of water at a given point (*Wombwell U. D. C.* v. *Dearne Valley Waterworks Co.* (1907), 71 J. P. 415).

See *Liverpool Corporation* v. *Brady* (1897), 14 T. L. R. 11, a case which turned on the construction of certain special sections in the Liverpool Water Acts relating to constant supply, and *Dublin Corporation* v. *Bray Township Commissioners*, [1902] 2 Ir. R. 88, which also turned on the construction of special enactments.

Penalty for neglect to lay pipes for supply of water for domestic use. Proviso.

36. If for twenty- eight days after demand in writing made to the undertakers, and tender made of an agreement, signed by such number of owners or occupiers as aforesaid, to take and pay for a supply of water for three years or more, the undertakers shall refuse or neglect to lay down pipes in the manner hereinbefore directed, and to provide such supply of water as aforesaid, or as provided by the special Act, they shall forfeit to each of such owners and occupiers the amount of rate which he would be liable to pay under such agreement, and also the further sum of forty shillings for every day during which they shall refuse or neglect to lay down such pipes or to provide such supply of water : Provided always, that the undertakers shall not be liable to any penalty for not supplying water if the want of such supply shall arise from frost, unusual drought, or other unavoidable cause or accident.

This section is wider in its operation than the marginal note suggests. See the notes to ss. 42 and 43, *post*, and the notes to s. 36 of the Gasworks Clauses Act, 1871, *ante*, p. 241.

This section has been repealed so far as it applied to the Metropolitan Water Board by the Metropolitan Water Board (Charges) Act, 1907, *post*, p. 684. See s. 12 of that Act which contains the substituted provision.

Supply of water to be kept for cleansing sewers, etc., and for other public purposes.

37. In all the pipes to which any fire-plug shall be fixed the undertakers shall provide and keep constantly laid on, unless prevented by frost, unusual drought, or other unavoidable accident, or during necessary repairs, a sufficient supply of water for the following purposes; (that is to say), for cleansing the sewers and drains, for cleansing and watering the streets, and for supplying any public pumps, baths, or washhouses, that may be established for the free use of the inhabitants, or paid for out of any poor rates or borough rates levied within the limits of the special Act ; and such supply shall be provided at such rates, in such quanties, and upon such terms and conditions, as may be agreed upon by the town commissioners and the undertakers, or, in case of disagreement, as shall be settled in England or Ireland by two justices, and in Scotland by the sheriff, until in either case an inspector shall have been appointed, and after the appointment of such inspector, by the inspector so appointed.

In the case of *The Guardians of the Poor of the Oldham Union* v. *Oldham Corporation* (1854), 2 W. R. 590, it appeared that the Oldham poor law union comprised eight townships, and that the union workhouse was maintained out of the common fund of the union, consisting of the aggregate of the poor rates within those townships. In 1853 the Oldham Corporation Gas and Water Act was passed, but it extended to only four of those townships and to two others not within the union. By s. 58 of that Act, "the corporation shall at all times afford an ample supply of gas and water without charge to all hospitals and infirmaries within the limits of the Act, and all baths and washhouses, and all buildings within those limits respectively *maintained at*

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the expense of the borough rates or the rates for the relief of the poor or other rates raised within those limits." It was held, that the corporation were not bound to supply gas and water gratuitously to the union workhouse, as it was not maintained by rates wholly raised within the limits of the Act.

A local board of health, empowered by their private Act to supply a town with water at certain rates, supplied an ornamental fountain (which had been presented to the town by one of the inhabitants and erected in one of the public streets) with water for the use of cattle in the cattle market on market days, and for horses, if yoked, when passing to and fro. The board had a fixed charge per horse for water supplied to persons keeping horses who might choose to have water laid into their stables. The respondent, in order to evade payment of this charge, took his horse from his stable to the fountain to drink. Upon a complaint against him for so doing, under s. 59, the magistrates being of opinion that the local board had no power to erect the fountain on the public highway except for the gratuitous use of the public, and that, therefore, the water supplied to such fountains came within the exception in the above clause, refused to convict. The Court of Common Pleas, however, held that the decision of the magistrates was wrong, for that whether the fountain were a public nuisance or not, the board were at liberty to supply it with water on their own conditions. The case was accordingly sent back to be reheard (*Hildreth* v. *Adamson* (1860), 8 C. B. (N.S.) 587). ERLE, C.J., observed: "The local board stand upon their rights and say that the magistrates were wrong. The magistrates say that the water was provided for the gratuitous use of the public, for this reason, that the fountain was placed on a public highway, and was an indictable obstruction unless the placing it there was justified under the 78th section of the Public Health Act, 1848 (11 & 12 Vict. c. 63), and they assume, therefore, that it was placed there under the authority of that section. They consider that the 78th section justifies the placing it there; but on that point I give no opinion. It may be that the 78th section does justify it. But whether the fountain is or is not an indictable obstruction is a question quite distinguishable from the question whether the water supplied to it is for the gratuitous use of the public. A man might place buckets of water on a stand in the middle of a highway for the use of horses passing on the road, and station a man there to prevent all others from using it, and he might be liable to an indictment for doing it; but it would be idle to say that he had dedicated the water to all the public. I think, therefore, that the respondent had no right to take the water against the will of the local board."

By the New River Company's Act, 1852 (15 & 16 Vict. c. clx.), s. 35, the company must supply houses within their limits with sufficient water for domestic purposes at certain fixed rates. By s. 38, domestic purposes are not to include engines or railway purposes, or baths, cattle, or fountains, or flushing sewers or drains, or any trade or business requiring an extra supply of water. By s. 41, the company shall, at the request of any consumer of water for purposes other than the purposes for or in respect of which the rates or charges are thereinbefore provided or limited, or at their own instance, afford a supply of water by means of a meter, and charge for the same at certain limited rates according to the quarterly consumption. The general Act of 1847 was incorporated with the Act of 1852. The Metropolitan Board of Works demanded from the company a supply of water by meter under s. 41 of the Act of 1852 for watering the roads and gardens on the Victoria Embankment, such supply being required only during one-third of the year and the driest weather. It was held, that the company was not bound to afford this supply at the limited rates fixed by s. 41; but that they were entitled to claim rates for such supply to be fixed by agreement or settlement under the section in the text (*Metropolitan B. of W.* v. *New River Co.* (1877), 37 L. T. 124). See now the substituted provisions of the Metropolitan Water Board (Charges) Act, 1907, (ss. 29 and 31), *post*, p. 698, as to the rate for the supply by the board of water for public purposes, and see that Act generally as to the charges for other purposes.

See also *Purnell* v. *Wolverhampton New Waterworks Co.*, cited *post*, p. 488; and *Finchley L. B.* v. *Barnet District Gas and Water Co.* (1893), 9 T. L. R. 264.

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Fire-plugs.

Undertakers to affix public fire-plugs in mains.

38. The undertakers, at the request of the town commissioners, shall fix proper fire-plugs in the main and other pipes belonging to them, at such convenient distances, not being more than the prescribed distance, or, if no distance be prescribed, not more than one hundred yards from each other, and at such places as may be most proper and convenient for the supply of water for extinguishing any fire which may break out within the limits of the special Act; and in case of any difference of opinion as to the proper position or number of such fire-plugs, it shall be settled by such inspector as aforesaid, when appointed, and in the meantime by two justices in England or Ireland, and by the sheriff in Scotland.

The request must be under seal of the Local authority. See *per* LINDLEY, M.R., in *Grand Junction Waterworks Co.* v. *Brentford L. B.*, [1894] 2 Q. B. at p 740. The undertakers are not bound to affix fire-plugs except at the request of the local authority under s. 38 (and the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 66), or of the owner or occupier of works or manufactory under s. 41. If the undertakers affix fire-plugs without request of the local authority, the latter are not bound to pay for the same or for repairs under s. 40 (*ibid.*)

As to the "inspector," see the interpretation clause, *ante*, p. 381.

Duty of urban authority to provide fire-plugs.

By the Public Health Act, 1875, s. 66, it is provided that "Every urban authority shall cause fire-plugs and all necessary works machinery and assistance for securing an efficient supply of water in case of fire to be provided and maintained, and for this purpose they may enter into any agreement with any water company or person; and they shall paint or mark on the buildings and walls within the streets words or marks near to such fire-plugs to denote the situation thereof, and do such other things for the purposes aforesaid as they may deem expedient."

Position of rural authority as to fire-plugs.

It will be observed that by s. 66 of the Public Health Act, *supra*, only urban authorities are placed under the obligation to provide fire-plugs, and as there is no other distinct enabling section, rural district councils are given no express powers under the Act for the provision of fire-plugs, hydrants and other appliances for furnishing water for fire brigade purposes. Where, however, a rural district council provide a public water supply for a parish in their district they may be presumed to have power to fix fire hydrants in the mains as part of the works of water supply which they may carry out under s. 51. In other cases, if power to provide hydrants is required by a rural district council, they should apply to the Local Government Board for an order under s. 276. In view of the imperative character of s. 66, it is the Board's practice to restrict such orders to the particular parish or parishes in which the appliances are shown to be required, and in which the council are prepared to take action at once.

Fire-engines and brigades.

As to the powers of an urban authority to provide fire-engines, see s. 171 (2), (incorporating ss. 30—33 of the Towns Police Clauses Act, 1847), the Parish Fire-engines Act, 1898, and s. 90 of the Public Health Acts Amendment Act, 1907.

Rural Authorities may obtain powers in this behalf by means of an urban powers order under s. 276, and independently of such powers, action may be taken parochially in *rural* parishes by the parish council, lighting inspectors, or by overseers, as the case may be, under one or other of the following enactments: The Lighting and Watching Act, 1833 (s. 44), the Poor Law Amendment Act, 1867 (s. 29), the Local Government Act, 1894 (s. 6 (1) (c) (ii.)), the Parish Fire-engines Act, 1898, and the Public Health Acts Amendment Act, 1907 (s. 90).

The superintendent of the fire brigade of an urban district having called in the services of another fire brigade on the occasion of a fire, it was held

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that the superintendent had implied authority to employ those services, and that the urban district council were liable to make reasonable remuneration (*James* v. *Staines U. D. C.* (1900), 83 L. T. 426).

Although s. 33 of the Town Police Clauses Act, which is incorporated in the Public Health Act, 1875, authorises an urban authority to make a charge for the services of a fire brigade when the fire engine is sent outside their district, a charge cannot be made for the attendance of a fire-engine and fire brigade within their district (*Bridlington L. B.* v. *Bower* (1873), 38 J. P. 73).

Duty of London county council in metropolis.

By the Metropolitan Fire Brigade Act, 1865 (28 & 29 Vict. c. 90), the duty of extinguishing fires and protecting life and property in case of fire within the metropolis was entrusted to the Metropolitan Board of Works, and they were authorised to establish a fire brigade. Sect. 32 transferred to them all the powers then exercised by any local body or officer within the metropolis as respects fire-plugs. The operation of this section is subject to the provisions of the Metropolis Water Act, 1871, s. 34; see *post*, p. 555. By the Local Government (England and Wales) Act, 1888 (51 & 52 Vict. c. 41), s. 40 (8), the powers, duties, and liabilities of the Metropolitan Board of Works were transferred to the London County Council.

Hydrants, fire-plugs, and other apparatus, provided by a metropolitan waterworks company, pursuant to the Metropolitan Fire Brigade Act, 1865 (28 & 29 Vict. c. 90), s. 32, and the Metropolis Water Act, 1871, s. 34, for supply of water in case of fire, may be used by the waterworks company for purposes other than the supply of water for extinguishing fires, cleansing sewers and drains, cleansing and watering streets, or supplying public pumps, baths, and washhouses, without the consent of the London County Council, and may, by permission of the company, be used by persons other than the company (*London C. C.* v. *East London Waterworks Co.*, [1900] 1 Q. B. 330).

Fire-plugs, etc.

Liability of water companies in relation to fire-plugs.

Where, by a frost of a severity rarely felt in England, a fire-plug, which had resisted the frost for twenty-five years, was forced out, and the water escaped from the main, but owing to the stopper above the plug being covered with ice and snow the water could not rise to the surface, but was forced through the brickwork round the neck of the main, and made its way into the plaintiff's cellar, where it did damage: it was held, that the company were not liable, since the accident arose from a frost of extraordinary severity, the effects of which the company could not foresee or be expected to guard against, and consequently that there was no negligence on their part (*Blyth* v. *Birmingham Waterworks Co.* (1856), 11 Ex. 781). But although a water company is not liable for the unforeseen results of an extraordinary frost, yet the company is bound to take reasonable care to provide against the consequences of ordinary frost (*Steggles* v. *New River Co.* (1865), 13 W. R. 413). Therefore, where it was known that the effect of frost would be to cause the plugs in the water pipes to start, and thus to let the water out at the side, and some precautions might have been taken, if not to prevent this, at all events to prevent the water from escaping through the soil, and no such precautions having been taken, the plugs started in a frost of extraordinary severity, and the water, thus escaping, ran through the soil, into a cellar: it was held that there was some evidence of negligence on which a jury might hold the company liable (*ibid.*).

By a local Act, a waterworks company was bound, at the request of the town improvement commissioners, to fix fire-plugs into their mains, and to repair and keep them in proper order, at the cost of the improvement commissioners, in whom the property in the plugs was vested by virtue of their improvement Act. In consequence of the cap of one of the fire-plugs provided under the Act being broken, a horse placed his foot in the plug-hole and was lamed:—*Held*, that the waterworks company, and not the commissioners, were liable for the injury (*Bayley* v. *Wolverhampton Waterworks Co.* (1860), 6 H. & N. 241). Here it will be observed that the fire-plug was out of repair.

In *Moore* v. *Lambeth Waterworks Co.* (1886), 17 Q. B. D. 462, it appeared that a fire-plug had been lawfully fixed in a highway by the defendants.

Originally the top of the fire-plug had been level with the pavement of the highway, but in consequence of the ordinary wearing away of the highway the fire-plug projected half an inch above the level of the pavement. The fire-plug itself was in perfect repair. The plaintiff, whilst passing along the highway, fell over the fire-plug and was hurt. It was held by the Court of Appeal that, as the fire-plug was in good repair, and had been lawfully fixed in the highway, no action by the plaintiff would lie against the defendants.

In *Dawson & Co.* v. *Bingley U. D. C.* (1910), 75 J. P. 17, the plaintiffs sought from the defendants damages alleged to have been occasioned by their negligence in covering up a fire-plug with a layer of earth and in not properly indicating the position of the fire-plug, whereby the efforts of a fire brigade to extinguish a fire on their premises were retarded. A plate with the letters and figures "F. P. 22 ft." had been put in the road by the defendants, but the plug was some feet out of position in relation to the plate, although the plug could have been seen if not covered up. The road had not been taken over by the local authority. A jury found that the authority were negligent in not keeping the plug level with the surface of the road and in not indicating its situation, but that there was no evidence that they had covered up the fire-plug. They also found that this negligence caused delay in extinguishing the fire, and awarded damages. On further consideration, it was held that the action failed, as the defendants were not responsible for the covering up the plug, and because the incorrect indicating plate was not the *causa causans* of the damage.

The plaintiffs appealed, and the Court of Appeal held that the finding of the jury as to the indication plate was a finding of misfeasance, and allowed the appeal (75 J. P. N. 124).

In *Hancock* v. *Southwark and Vauxhall Waterworks Co.*, [1889] W. N. 198, the plaintiff brought an action to recover damages for injuries inflicted on a child owing to the bursting of a fire-plug attached to one of the defendants' mains. The company contended that the remedy, if any, was for penalties under s. 43 of the Act of 1847. Charles, J., decided that on the facts the injury did not arise from neglect to "maintain or repair," and that even if it had, that section referred only to cases of failure on the part of the defendants to fulfil the statutory duty of keeping the pipes full in case of fire, and had not the effect of exonerating them from the common law obligation of exercising statutory powers without negligence.

In *Humphreys* v. *Southwark and Vauxhall Water Co.*, Jl. of G. L., May 7th 1889, vol. 53, p. 861, the plaintiff sued in the county court for damage to goods exposed for sale on the footway through a fire-plug being blown out and a consequent escape of water. The company maintained that the cause of the mischief was the use by the vestry of a steam-roller which had damaged the fire-plug and box. The company applied at chambers for a *certiorari* to remove the action to the High Court, on the ground that important points of law were involved in the case. Mathew, J., granted a *certiorari*, on condition that if the company succeeded they should not ask for costs on the High Court scale, but that if the plaintiff succeeded he should have costs on that scale. The company appealed to a divisional court against this condition, but the order of Mathew, J., was adhered to.

In *Hendra* v. *Chelsea Waterworks Co.* (1891), 8 T. L. R. 101; the plaintiff brought her action to recover damages for personal injuries caused by the alleged negligence of the company in placing an open fire-plug in the footpath of Bagley Lane, Fulham. The evidence showed that the fire-plug was fixed in the following way: A piece of elm wood about two feet in depth, called a box, had a hole bored through the centre, and a bush with an opening of 2⅞ inches diameter driven into it. The plaintiff, while walking along the footpath, caught her heel in the open hole of the plug, which tripped her up, and she injured her wrist. It was attempted to be made out on behalf of the plaintiff that the company were guilty of negligence in placing an open instead of a covered fire-plug, and it was said that modern fire-plugs were covered, some in square boxes with covers, and others with a hinged flap-covering. The

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evidence for the company showed that they had 5,000 of such fire-plugs, all of the same pattern, and that other water companies used the same pattern, and that there were 40,000 such fire-plugs about London, sometimes in the pathway, but mostly in the roadway. Evidence was given as to the disadvantage, etc. of having covers, which, it was said, were liable to get rusted, frozen down, or set fast with mud or dirt, and it was also said that a hinged cover was more dangerous than an open plug. A. L. SMITH, J., in charging the jury, is reported to have said: "Was the fire-plug, when put down (as it was not contended that it got out of order), a public nuisance, or was it reasonably safe for the persons lawfully passing and repassing along the highway? When they were considering the question of nuisance or no nuisance, there was one important fact, viz., that in the metropolis there were 40,000 of these plugs, and how many millions of persons had walked over them since they had been put down." The jury found for the defendants.

In *Osborn* v. *Metropolitan Water Board* (1910), 74 J. P. 190, the plaintiff put the toe of her boot into a stop-cock box in the pavement of a highway, and, falling to the ground, sustained personal injuries. The stop-cock box, was placed in the pavement under their statutory authority by the Lambeth Waterworks Company, one of the predecessors of the Metropolitan Water Board. It appeared that the box was 2½ inches in diameter and 3½ inches deep down to the top of the spindle in it. It also appeared that a large number of boxes of this kind, without a cover, had been in existence in the pavements of London for many years, and that it was the custom of the water board, after using a box to fill it up with a wisp of hay or straw with earth or mud above. At the time of the accident the box in question was not quite filled with the wad. The wad was not flush with the top of the box. In an action by the plaintiff for damages for negligence and for nuisance against the water board, the county court judge held that the box had been originally properly constructed, but that it had not been properly maintained by the defendants, and that it constituted a nuisance. On appeal it was held (1) that the box had been properly constructed; (2) that there was a duty on the water board to the public, after using the box, to put in a wad and fill it up; and (3) that there was no duty on the water board from time to time to cure the wearing down of the wad. On these rulings it was held that the county court judge might find on the facts that the proper inference was that the last time the box had been used by the water board no wad had been put in, or that an inferior and insufficient wad had been put in, and that as a result the accident happened. Accordingly, the appeal was dismissed.

In *Rosenbaum* v. *Metropolitan Water Board* (1910), 74 J. P. 378, the plaintiff caught the heel of her shoe in a stop-cock box and sustained personal injuries. For some time it had been the practice of the servants of the board to stop up each hole with a plug or wad of straw with earth or mud above it. These plugs were renewed three times a year. On the occasion of the accident it was proved that the plug of straw had become so worn as to leave a hole some two inches deep. It was held that there was a duty on the water board to the public to keep the holes properly plugged with straw, and that, having failed to discharge this duty, they were liable in damages. On appeal, a new trial was ordered on the ground that the question whether the box was a danger without the straw had not been considered. *Osborn's Case, supra*, was observed upon (see 75 J. P. 12).

In *Bond* v. *Wandsworth Borough Council and the Metropolitan Water Board*, Jl. of G. L., July 19th, 1910, vol. cxii., p. 202, the plaintiff claimed damages for injuries sustained by her through the alleged negligence of the defendants. The plaintiff, in passing along the road, caught her foot in a hole in the pavement which had been cut by the council to receive a stop-cock and box which had been furnished by the board for the purpose of giving a supply of water to the adjoining house. The council were about to make up the road and invited the board to have the water fittings brought to the necessary level before the pavement was placed in position; and this having been done, workmen on behalf of the council adjusted the stop-cock and box in position. The county court judge held that there was no liability

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on the council to maintain the stop-cock and box in repair and dismissed the action as against them. With regard to the alleged liability of the board it was held that the board were relieved from liability by the Metropolitan Water Board (Charges) Act, 1907, which Act shifted the responsibility on to the private owners who requested the board to furnish their property with a supply of water. But see *Batt* v. *Metropolitan Water Board*, cited *post*, p. 691.

In *Stockings* v. *Lambeth Waterworks Co.*, Jl. of G. L., March 10th, 1891, vol. 57, p. 454, it appeared that the plaintiff was walking down Great Dover Street when his foot caught in the hole of a fire-plug box, with the result that he was thrown violently to the ground and permanently injured. It appeared that the vestry had recently renewed the pavement and raised the fire-plug to the level of the street. From some cause, however, it had sunk 1¾ inches. The company contended that the form of box used was the ordinary and proper one, which experience had shown to be safe, and that if anyone was liable it was the vestry. CAVE, J., charged the jury that the question was whether or not the fire-plug was dangerous to the public at the time it was laid down; that the defendants could not be held liable simply because the vestry had interfered with the road; that there was no enactment providing that when the vestry interfered with the roads the water company were to take up and reset the fire-plugs; that their statutory duty was discharged when they properly put down the plug originally; and that if it afterwards became dangerous owing to the action of the vestry the defendants were not liable. The jury found a verdict for the plaintiff, and judgment was entered for £175, the amount agreed upon as damages. An appeal was dismissed, see 7 T. L. R. 460. See also *Moore* v. *Lambeth Waterworks Co.*, cited *ante*, p. 480.

In June, 1907, the plaintiff slipped from a water-box in a highway from which the surrounding flags had subsided, and was injured. In an action for damages against the defendants, the water authority of the district, the county court judge found that the defendants, after breaking up the highway at this spot in October, 1904, in pursuance of their statutory powers, had (through their agents) put back the ground in such a way that there was a subsidence within their year of liability under s. 32 of the Waterworks Clauses Act, 1847, and that such subsidence was not effectively made good within that year, which ended in October, 1905, or before the accident. He held that the defendants' breach of duty brought about the accident, and, notwithstanding the concurrent liability of the highway authority to repair the highway, gave judgment for the plaintiff for £40. The defendants had in point of fact agreed with the highway authority to do all necessary repairs on their behalf during their year of liability:—*Held*, that there was evidence to support the findings of the county court judge, and that on these findings his decision was right (*Hartley* v. *Rochdale Corporation*, [1908] 2 K. B. 594).

Where an urban authority complained before the justices that the company had a pipe in a certain street and neglected to fix therein a proper fire-plug, and it appeared that the pipes were insufficient in size to carry a proper fire-plug, and the company offered to put a larger pipe if the authority paid for it, which they refused to do, and in the opinion of the justices, empowered by s. 38 to settle the proper position of the fire-plugs in the district, it was essential that a fire-plug should be placed there; it was held, on a case stated, that there was nothing in the Act of 1847 to compel the water company to provide at their own expense a pipe of sufficient size for an effective fire-plug (*R.* v. *Wells Water Co.* (1886), 55 L. T. 188).

Stop-cocks on service pipes.

The defendants, a water company, laid a communication pipe from their main to the consumer's house. In the communication pipe there was a stop-cock and box communicating with the surface of the road, the aperture of which was left uncovered. The plaintiff, who at the time was lame, was walking along the road with the assistance of a staff, and not seeing the aperture put the staff into it and fell and received the injuries complained of. At the trial there was evidence that the aperture was dangerous to passers-by; but it was alleged on the part of the defendants that the property

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in the stop-cock box was in the consumer, and that by statute the consumer was bound to maintain and repair it. The learned judge at the trial nonsuited the plaintiff:—*Held,* that inasmuch as there was evidence of negligence on the part of the defendants the nonsuit was wrong. MATHEW, J., said: "The only question here is, was there any evidence upon which the jury might reasonably arrive at a conclusion that the defendants are liable? The article in question was supplied by the defendants, was put near the consumer's premises, and therefore on the public pavement, and was used from time to time by the defendants during the occupancy of the consumer. There was evidence that it was dangerous to passers-by. There was thus a nuisance created; and the verdict of the jury ought to have been taken upon it. In my opinion, therefore, the case was wrongly withdrawn from the jury. There must, therefore, be a new trial." GRANTHAM, J., concurred. New trial accordingly ordered (*Strute* v. *Southwark and Vauxhall Water Co.* (1889), 53 J. P. 424).

In *Chapman* v. *Fylde Waterworks Co.*, [1894] 2 Q. B. 599, a stop-cock had been inserted in a service pipe by the company at the request of the householder, who paid the cost. The plaintiff was tripped up by the cover, which had a flap which was out of repair and projected above the footway. The jury found that the cover was out of repair, and that the accident was caused by the negligence of the party whose duty it was to keep the stop-cock and cover in repair. DAY, J., decided that by s. 19 of the Act of 1863 the householder was practically prevented from repairing, and that the company were authorised to repair, and hence that they had the control. He therefore gave judgment against the company. The Court of Appeal affirmed this decision, holding that although an owner or occupier was entitled to break up the street for the purpose of laying or removing a service pipe, he was not entitled to do so for the purpose of repairing the service pipe, and that the right to do so rested exclusively with the water company. The decision in this case was distinguished in *Grand Junction Waterworks Co.* v. *Rodocanachi*, *post*, p. 565. It was followed by a Divisional Court in *Colne Valley Water Co.* v. *Hall* (1907), 71 J. P. 173. In the last-mentioned case, a communication pipe connecting a main of a water company with the premises of a consumer lay under a highway. The company did not prove that such pipe was the property of the consumer. It was held that the liability to repair the pipe was upon the company, and this decision was affirmed on appeal (see 72 J. P. 25). The Divisional Court held that the liability to repair was upon the company, even if the pipe was proved to be the property of the consumer; but the Court of Appeal declined to decide that question. See a criticism on the decision in 72 J. P., at p. 97. See also *Parnell* v. *Portsmouth Waterworks Co.*, *post*, p. 493.

In *East London Waterworks Co.* v. *Vestry of St. Matthew, Bethnal Green* (1886), 17 Q. B. D. 475, the Court of Appeal decided that ss. 28 and 32 of the Act of 1847 authorised the placing, in the pavement of a street, of covers or guard boxes to protect stop valves placed for the purpose of regulating the supply of water in the communication pipes by which water was supplied to premises in the street, such covers or guard boxes not creating a nuisance or being inconsistent with the substantial reinstatement of the pavement. And the vestry having removed such covers or guard boxes, the company were held entitled to recover damages. In this case the facts were as follows: Among the regulations made in pursuance of the Metropolis Water Acts, 1852 (15 & 16 Vict. c. 84) and 1871 (34 & 35 Vict. c. 113), is the following: "Every communication pipe for the conveyance of water to be supplied by the company into any premises shall have at or near its point of entrance into such premises, and if desired by the consumer within such premises, a sound suitable stop valve of the screw-down kind with an area of waterway not less than that of a half-inch pipe, and not greater than that of the communication pipe, the size of the valve within these limits being at the option of the consumer. If placed in the ground such stop valve shall be protected by a proper cover and guard box." The plaintiffs, claiming to act under this regulation, placed stop valves in the communication pipes supplying water to certain houses in the Bethnal Green Road, and placed such stop valves outside the houses in the ground at or near the point of entrance of such pipes, not within the premises but on the public footway. For the purpose of protecting the said stop valves, and obtaining convenient access to them, and of detecting waste, the plaintiffs placed in the pavement above the said stop valves and on the public footway certain covers and guard boxes as provided by the above regulation. The plaintiffs, after completing the work of placing the covers and guard boxes, filled in the ground and reinstated and made good the pavement so far as was possible during the continuance of the covers and guard boxes, but the footway was not completely repaved in so far as the insertion of the guard boxes was inconsistent with a complete repaving, but only so far as the existence of the covers and guard boxes made it inconsistent. The defendants, claiming to act as the street authority under the Metropolis Management Acts, removed the covers and guard boxes in order to make the footway pavement continuously of the same material and construction as it was before the operations of the plaintiffs. The question for the court was whether the water company were entitled to maintain the action. In his judgment Fry, L.J., referring to s. 28 of the Act of 1847, said: "I think the words 'which the undertakers shall deem necessary for supplying water,' are to be read not as referring only to what is necessary merely for the actual supply of water, but as including any matter reasonably necessary in connection therewith, as, for instance, anything necessary for the prevention of the waste or misuse of water. Anything that is necessary to the successful conduct of the undertaking seems to me, in this sense, to be necessary for the supply of water."

By a local Waterworks Act passed in 1858 it was provided that, for the purpose of preventing waste of the water, all persons supplied with water by the waterworks company should provide "proper ball or stop-cocks or other necessary apparatus for regulating such supply," and that in case any such person neglected to provide such apparatus after being required to do so, the company might cut off the water from his premises. At the date of that Act the supply of water provided by the company was intermittent. By another Act, passed in 1888, the company were required to provide a constant supply of water. It then, for the first time, became necessary, for the prevention of waste, that a system should be adopted of inserting in each communication pipe an apparatus, called a screw-down valve, whereby the water could be shut off from any premises in which there were indications of the water being permitted to run to waste:—*Held*, that the "ball or stop-cocks" required by the Act of 1858 were things connected with the consumer's cistern, and that screw-down valves were not included in those words; further, that such a screw-down valve was not an apparatus for regulating the supply within the meaning of that Act, and that the company could not justify cutting off the water from the premises of a person who neglected to comply with a notice requiring him to insert such a valve in his communication pipe (*Ward* v. *Folkestone Waterworks Co.* (1890), 24 Q. B. D. 334). In this case it appeared that the company, in their Act of 1888, s. 6, took power themselves to fix the "stop valves of the screw-down kind" in the communication pipes; and there was nothing in that Act to compel the consumers to do the work.

Liability of local authorities in relation to fire-plugs.

In actions against local authorities as highway authorities some special considerations arise. It has long been settled law that no action for damages will lie against a surveyor of highways for injuries received by reason of the highway being out of repair, the remedy being by indictment (*Russell* v. *Men of Devon* (1788), 2 T. R. 667). "It is now beyond doubt the law that where a person, though lawfully using a highway, is damaged, either as regards himself, his horse or his carriage, merely by reason of the non-repair of a highway, he has no action at law for damages against anyone. . . . . In the year 1870 it had been held by the Court of Queen's Bench in *Gibson* v. *Mayor of Preston* (1870), L. R. 5 Q. B. 218, that a local authority who were constituted surveyors of highways by the Public Health Act, 1848, had the same immunity from actions for damages as a surveyor of highways; and the House of Lords, in *Cowley* v. *Newmarket L. B.*, [1892] A. C. 345, affirmed *Gibson's Case*, and conclusively settled that no action for damages will lie against any local board for merely allowing their

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highways to get out of repair": *per* A. L. SMITH, L.J., in *Thompson* v. *Mayor, etc. of Brighton*, [1894] 1 Q. B., at p. 338. See also *Sanitary Commissioners of Gibraltar* v. *Orfila* (1890), 15 App. Cas. 400; *Municipality of Pictou* v. *Geldert*, [1893] A. C. 524; *Municipal Council of Sydney* v. *Bourke*, [1895] A. C. 433; *Maguire* v. *Liverpool Corporation*, [1905] 1 K. B. 767; *cf. Barnett* v. *Poplar Borough Council*, [1901] 2 K. B. 319; and *Smith* v. *West Derby Local Board*, and other cases cited at p. 487.

In *Kent* v. *Worthing L. B.* (1882), 10 Q. B. D. 118, it appeared that the iron cover of a valve connected with a water main was properly fixed in a highway by the defendants, but in consequence of the ordinary wearing away of the highway the valve cover projected an inch above it. The plaintiff's horse using the highway stumbled over the valve cover and was hurt. In an action against the defendants, who were both the water authority and the highway authority, for the injury to the horse, it was held that it was the duty of the defendants to make such arrangements that works under their care should not become a nuisance to the highway, and that the plaintiff was entitled to recover. This case, however, after having been much questioned in *Moore* v. *Lambeth Waterworks Co., supra*, was ultimately overruled by the Court of Appeal in *Thompson* v. *Mayor, etc. of Brighton*, and *Oliver* v. *L. B. of Horsham*, [1894] 1 Q. B. 332. In *Thompson's Case* it appeared that a manhole had been inserted in the road by the corporation as the sewer authority. It had a proper cover, and there was no fault in its construction, nor was it at all out of repair. The roadway had become worn down so that the cover of the manhole projected above an inch and a half above the surface of the road. The foot of the plaintiff's horse struck the cover and the plaintiff was thrown down and seriously injured. In *Oliver's Case* the local board as sewer authority had inserted a sewer grating in the road. The grating was properly constructed and in good repair. The accident to the plaintiff's horse, which tripped against the grating, was attributed solely to the neglect of the local board, who were the road authority, to keep up the road to the level of the grating. The judges were unanimous in overruling *Kent* v. *Worthing L. B.*, and in holding that the plaintiffs could not recover in either of the cases. See *Winslow* v. *Bushey U. D. C.* (1908), 72 J. P. 259.

In *Borough of Bathurst* v. *Macpherson* (1879), 4 App. Cas. 256, the Privy Council decided that an action might be successfully maintained against the highway authority who had constructed a barrel drain into which ran an open drain, the brickwork of which having broken away, and not having been repaired, a hole was caused into which the plaintiff's horse fell. The *ratio decidendi* is thus stated by Sir BARNES PEACOCK: "Their lordships are of opinion that under these circumstances the duty was cast upon them" (the municipality of Bathurst) "of keeping the artificial work which they had created in such a state as to prevent its causing a danger to passengers on the highway, which, but for such artificial construction, would not have existed, or, at the least, of protecting the public against the danger when it arose, either by filling up the hole or fencing it." *Cf. Municipal Council of Sydney* v. *Bourke*, cited *supra*, and *Lambert* v. *Lowestoft Corporation*, [1901] 1 K. B. 590. In *White* v. *Hindley L. B.* (1875), L. R. 10 Q. B. 219, the plaintiff's horse trod on a grid or grating put in the road by the defendants as sewer authority for the purpose of draining the surface water off the road into the sewer. The grid was in a defective state, and gave way, whereby the injury arose. It was held, although the defendants were not liable as surveyors of the highway, they were liable as owners of the sewer, of which the grid formed part, for negligence in not keeping the grid in a proper state. This case was followed in *Blackmore* v. *Vestry of Mile End Old Town* (1882), 9 Q. B. D. 451, where it appeared that a water meter (which was the property of a water company, and was used for measuring the water supplied by the company to the defendants for watering the streets) was placed by the defendants in a box of theirs sunk in the footway of one of the streets and covered with an iron flap. The defendants were, by s. 96 of the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), the surveyors of highways, and by s. 116 were authorised to cause the streets in their parish to be watered. The plaintiff whilst walking along the street stepped on the iron flap, and by reason of its having been worn smooth and become slippery and dangerous, he fell and was injured. In an action by him against the defendants for damages for such injury :—*Held*, that though the defendants might not be liable as surveyors of the highway for negligence in not keeping the iron flap in a proper state, they were liable in their capacity as the authority for watering the street, in which capacity they had placed the iron flap there. See this case commented on in *Moore* v. *Lambeth Waterworks Co.* (1886), 17 Q. B. D. 462.

In *Smith* v. *West Derby L. B.* (1878), 3 C. P. D. 423, it was held that the defendants, being both highway and sewer authority, were liable as sewer authority for negligence in filling in a trench in which their sewer was laid. See also *Cox* v. *Vestry of Paddington* (1891), 64 L. T. 566; *Steel* v. *Dartford L. B.* (1891), 60 L. J. Q. B. 256; *Whyler* v. *Bingham R. D. C.* [1901] 1 K. B. 45; *Shoreditch Corporation* v. *Bull* (1904), 68 J. P. 415; and *Hawthorn* v. *Kannullink*, [1906] A. C. 105.

A local board, apart from the Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), cannot be indicted for non-repair of a highway within their district, but the indictment must be against the inhabitants (*R.* v. *Mayor, etc. of Poole* (1887), 19 Q. B. D. 602); but under s. 10 of that Act an indictment will lie (*R.* v. *Mayor, etc. of Wakefield* (1888), 20 Q. B. D. 810).

By s. 171 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), incorporating s. 32 of the Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), an urban authority "may employ a proper number of persons to act as firemen, and may make such rules for their regulation as they think proper." The respondent, a member of a fire brigade provided by an urban authority, was instructed by his foreman to exclude all persons from certain premises, where the brigade was engaged in extinguishing a fire. He refused admission to the appellant, a member of a volunteer fire brigade, who thereupon endeavoured to force an entrance, and in so doing assaulted the respondent :—*Held*, that the effect of the statutes was to give to the brigade provided by the urban authority control over the premises, that the appellant was lawfully excluded, and could not justify his attempt to force an entrance, and therefore was rightly convicted of an assault (*Carter* v. *Thomas*, [1893] 1 Q. B. 673). See further as to control at fires, s. 89 of the Public Health Acts Amendment Act, 1907, which, however, only becomes operative when put in force in any district by an order of the Home Secretary.

Undertakers to repair fire-plugs, and deposit keys thereof at engine houses, etc.

39. The undertakers shall from time to time renew and keep in effective order every such fire-plug; and as soon as any such fire-plug is completed they shall deposit a key thereof at each place within the limits of the special Act where any public fire engine is kept, and in such other places as may be appointed by the town commissioners, and shall put up a public notice in some conspicuous place in each street in which such fire-plug is situated, showing its situation, which notice the undertakers may put up on any house or building in such street.

See, hereon, *Dawson* v. *Bingley U. D. C.* cited, *ante*, p. 481.

Expense of fire-plugs, etc., how to be borne.

40. The cost of such fire-plugs, and the expense of fixing, placing, and maintaining the same in repair, and of providing such keys as aforesaid, shall be defrayed by the town commissioners.

See *Grand Junction Waterworks Co.* v. *Brentford L. B.*, cited *ante*, p. 497.

Fire-plugs to be placed near manufactories, at request, etc., of owners.

41. The undertakers shall, at the request and expense of the owner or occupier of any work or manufactory situated in any street in which there shall be a pipe of the undertakers, place and maintain in effective order a fire-plug (to be used only for extinguishing fires) as near as conveniently may be to such work or manufactory.

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Pipes to be kept charged, and water taken to extinguish fires without charge.

42. The undertakers shall at all times keep charged with water under such pressure as aforesaid, all their pipes to which fire-plugs shall be fixed, unless prevented by frost, unusual drought, or other unavoidable cause or accident, or during necessary repairs, and shall allow all persons at all times to take and use such water for extinguishing fire, without making compensation for the same.

As to the required pressure, see s. 35. The duty imposed by this section is enforceable by the penalties provided for by s. 43. The general rule of law is that where a statute creates a duty and imposes a penalty for its non-performance, no action for damages will lie at the suit of individuals aggrieved by the non-performance, and the only available remedy is the penalty. Cases on this subject are referred to *ante*, p. 243, and *post*, p. 490.

In the case of *Atkinson* v. *Newcastle Waterworks Co.* (1877), 2 Ex. D. 441, the plaintiff brought an action for damages against a waterworks company for not keeping their pipes charged as required by the Waterworks Clauses Act, whereby his premises situate within the limits of the company's Act were burnt down. The Court of Appeal (reversing the judgment of the Court of Exchequer) held that the Act gave no right of action to the plaintiff, his remedy being by enforcement of the penalty provided for by the Act. The decision in this case was held not to apply in an action for injuries sustained by the bursting of a fire-plug in a highway, the penalty being for failing to keep the pipes charged in case of fire (*Hancock* v. *Southwark Waterworks Co.*, *ante*, p. 481. In *McColla* v. *Clacton-on-Sea Gas and Water Co.* (1889), 5 T. L. R. 690, the plaintiff alleged that the company had failed to supply him with water and claimed a declaration that he was entitled to a supply. STIRLING, J. (following *Atkinson's Case, supra*), refused to make any order, and the Court of Appeal affirmed that decision. See also the notes under the next section. An action will not lie against a gas company to which the provisions of the Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41), apply, for damages sustained by a consumer by reason of their failure to give him a supply of gas sufficient in amount and in purity to satisfy the requirements of the Act. The consumer's only remedy is to proceed for penalties under s. 36 of that Act (*Clegg, Parkinson & Co.* v. *Earby Gas Co.*, [1896] 1 Q. B. 592). See further the notes to s. 36 of the Gasworks Clauses Act, 1871, *ante*, p. 243.

In 1845, an Act of Parliament was passed for supplying the town of Wolverhampton with water, no mention being made in the Act as to the water being laid on at high pressure. In 1855 a new Act was passed for the same purpose, which by its first section enacted that the Waterworks Clauses Act, 1847, should, except as therein otherwise provided, be incorporated in it. By s. 40 of the Act of 1855, it was provided that "the water to be supplied from any pipe of the company need not be constantly laid on under pressure." In 1856 the two companies became amalgamated, by an Act entitled The Wolverhampton Waterworks Transfer Act, which incorporated the Act of 1847 in these terms, "The Waterworks Clauses Act, 1847, and . . . are incorporated with this Act." A fire having taken place, and there not being a sufficient supply of water, the complainant, on behalf of the corporation, obtained a summons against the company, and, upon the hearing, the magistrate decided that the company were not bound to keep the water on at high pressure, as the general Act was expressly varied and repealed by s. 40 of the Wolverhampton New Waterworks Act; and the court held, upon an appeal from that decision, that the magistrate was right. ERLE, C.J., observed: "There is a great deal in the argument, that these are all in the nature of private Acts, and that a provision in a private Act is not to be held repealed by a subsequent private Act, unless there are words which operate expressly to repeal it: and I think that the principle thus enunciated should guide our judgment upon this occasion. The provision contained in s. 40 of the 18 & 19 Vict. c. cli. is a most important one. What is there to show that the legislature intended to repeal it? If they had meant to do so, nothing was easier than to say so. There certainly is no express repeal, and I am unable to see any intention to repeal. . . . It seems to me that the new company is the only company now in existence, that it was an essential provision in the formation of that company that it should be exempted from the obligation of keeping its pipes charged with water at high pressure, and that the incorporation therewith of the Waterworks Clauses Act, 1847, was not intended to operate a repeal of that express exemption. That is, in truth, the turning point of the judgment" (*Purnell* v. *Wolverhampton New Waterworks Co.* (1861), 10 C. B. (N.S.) 576), See also *Finchley L. B.* v. *Barnet District Gas and Water Co.* (1893), 9 T. L. R. 264. As to the general rule that a private Act cannot by implication repeal a former private Act, see further *Trustees of Birkenhead Docks* v. *Birkenhead Dock Co.* (1854), 23 L. J. Ch. 457. As to the effect of general Acts on previous private Acts, see cases cited *ante*, p. 221, and *post*, under Companies Clauses Act, 1845, s. 2.

Sect. 79 of the East London Waterworks Act, 1853, provided that the company should, at the request of an owner or occupier of any premises situate in or adjoining any street in which any main or service pipe of the company was or should be laid, and who required a supply of water, afford such supply of water. The plaintiff declared upon this section, and stated that he was such an owner and occupier, and that he requested and required a supply of water, but that the defendants wrongfully, improperly and negligently made default in affording to the plaintiff the said supply, by reason whereof he was unable to extinguish a fire which destroyed his premises. The defendants pleaded that the said main or service pipe had a certain fire-plug properly fixed in it, and that the said fire-plug was opened for the purpose of supplying water for extinguishing another fire, which was the cause of default. They also pleaded that they were prevented from affording the said supply of water "from unavoidable cause or accident." It was held upon demurrer, that the former of these two pleas was good, but that the latter was bad (*Campbell* v. *East London Waterworks Co.* (1872), 26 L. T. (N.S.) 475).

See also *Dawson* v. *Bingley U. D. C.*, cited *ante*, p. 481.

Where the magistrate found as a fact that the insufficient supply arose from "unusual drought or from an extraordinary consumption of water in the district" a divisional court on a case stated, found that that constituted a good defence (*Industrial Dwellings Co.* v. *East London Waterworks Co.* (1893), 58 J. P. 430).

The water which may be taken by all persons at all times for extinguishing fires without compensation, under s. 42, is the water from the undertaker's pipes to which fire-plugs are fixed. A water company, by agreement with the defendants, laid a pipe from their main to a water-trough on the defendants' private land for agricultural purposes at an agreed rate. Afterwards, at the request and at the expense of the defendants, the company fixed a fire-plug near the trough. Water drawn through this fire-plug was used for extinguishing a fire in a hay stack belonging to the defendants. It was held that the company were entitled to make a charge for the water so used (*Weardale and Consett Water Co.* v. *Chester-le-Street Co-operative Society, Ltd.*, [1904] 2 K. B. 240). See also a judgment of his Honour Judge Bradbury, at Oldham County Court, noticed in 70 J. P. 472 n.; and *Metropolitan Water Board* v. *Cotton & Co., Ltd.*, Jl. of G. L., December 31st, 1907.

Penalty for refusal to fix, etc., fire-plugs, or occasional failure of supply of water.

43. If, except when prevented as aforesaid, the undertakers neglect or refuse to fix, maintain, or repair such fire-plugs, or to furnish to the town commissioners a sufficient supply of water for the public purposes aforesaid, upon such terms as shall have been agreed on or settled as aforesaid, or if, except as aforesaid, they neglect to keep their pipes charged under such pressure as aforesaid, or neglect or refuse to furnish to any owner or occupier entitled under this or the special Act to receive a supply of water during any part of the time for which the rates for such supply have been paid or tendered, they shall be liable to a penalty of ten pounds, and shall also forfeit to the town commissioners, and to every person having paid or tendered the rate, the sum of forty

Sect. 43. shillings for every day during which such refusal or neglect shall continue after notice in writing shall have been given to the undertakers of the want of supply.

The above section apparently contemplates four offences: (1) Neglect to fix, maintain and repair fire-plugs; (2) neglect to furnish to the local authority a sufficient supply of water for public purposes; (3) neglect to keep the pipes charged under the provision specified in s. 35; (4) neglect or refusal to furnish a supply of water to a person entitled to receive such supply. The liability to a penalty imposed in respect of these offences is perhaps the only liability (see *Atkinson* v. *Newcastle, etc. Water Co.* (1877), 2 Ex. D. 441; *M'Colla* v. *Clacton-on-Sea Water Co.* (1888), 5 T. L. R. 690.) It may be that there is also a liability to an action for an injunction or a declaration (see *Gale* v. *Rhymney, etc. Water Co.*, cited under s. 53, *post*, p. 498.) If there be a failure of a duty not specified in s. 43, *e.g.*, an insufficient or an impure supply, a consumer may pursue an ordinary legal remedy (*Gale* v. *Rhymney, supra; Simpson* v. *South Oxfordshire Water and Gas Co.*, [1908] 1 K. B. 917, and see *Milnes* v. *Huddersfield Corporation* (1886), 11 App. Cas. 511). The fourth breach of duty specified in s. 43 means a *total cessation* of the supply, and not a neglect to furnish a sufficient quantity (see *Simpson* v. *South Oxfordshire Water, etc. Co., supra.*) Where there is a general failure of duty on the part of a water company an action to compel performance might be brought in the name of the Attorney-General (*Attorney-General* v. *Rhymney, etc. Water Co.* (1907), 71 J. P. 435; *Attorney-General* v. *Pontypridd Waterworks Co.*, [1908] 1 Ch. 388). See also notes to previous section. Penalties under this section can only be recovered by the owner or occupier where he has paid or tendered the water rate in advance. See the notes to s. 70, *post*, p. 513, and *Sheffield Waterworks Co.* v. *Brooks*, cited *infra*.

As to the effect of the exemptions contained in this and s. 13 of the Waterworks Clauses Act, 1863, see the judgment of CAVE, J., in *Sheffield Waterworks Co.* v. *Carter* (1882), 8 Q. B. D. 632.

In the case of *Sheffield Waterworks Co.* v. *Wilkinson* (1879), 4 C. P. D. 410, the facts were that an occupier, having failed to pay his water rate, the company, under s. 74 of the Act of 1847, lawfully cut off his supply. A succeeding occupier of the same premises subsequently demanded a supply, tendering to the company the current quarter's rate, and the estimated expense of restoring the communication; but the company refused to supply the water until the arrears due from the former tenant were paid. The court decided that the company were not warranted in refusing to supply water to the incoming tenant until the arrears due to them from the previous tenant were paid; but they held that until the then tenant had himself restored the communication with the company's mains the company were not liable to penalties under s. 43 of the Act of 1847 for not supplying the water demanded, and that tender to the company of the cost of restoring the communication was not sufficient. *Cf. Chapman* v. *Fylde Waterworks Co.* and *Colne Valley Water Co.* v. *Hall*, cited, *ante*, p. 484. The right to cut off supply for non-payment of rates is now qualified by the provisions of the Water Companies (Regulation of Powers) Act, 1887, the terms of which will be found cited in the notes to s. 74, *post*. And as to the metropolis, see Public Health (London) Act, 1891, s. 49; *Crow* v. *East London Waterworks Co.*, Jl. of G. L., August 4th, 1903; and *Grand Junction Waterworks Co.* v. *Rodocanachi*, cited at length at p. 565, *post*.

In *Sheffield Waterworks Co.* v. *Brooks* (1882), 8 Q. B. D. 632, the respondent, not being entitled to water for a fixed bath except by measurement (see the provisions of the Sheffield Act more fully, *ante*, p. 474), and he refusing or omitting to fix a meter, gave notice to the company on September 15th, 1881, requiring a supply of water both for the ordinary use of himself and his family and for a water-closet and a fixed bath, and paid the company 11*s.* 3*d.*, which was the proper sum to be paid for the supply of water for ordinary use and for the water-closet for the quarter ending September 29th, 1881, but he made no payment or tender in respect of the water to be supplied to or used in the bath during such quarter. After notice of their intention, the company, on September 20th, cut off the water, and refused to supply any water for any purpose whatever. On September 24th the respondent severed the connection between his cistern and his bath, allowing, however, the outlet pipe of his bath to remain, so that the bath could still be used if water was introduced into it otherwise than by means of the inlet pipe from the cistern. He did not give any notice to the company of what he had done until September 29th, when he paid the proper sum for the supply of water for the ordinary use of himself and his family and for the water-closet down to December 25th, 1881. The company, however, still refused to supply water, apparently on the ground that he had not also cut off the outlet pipe from his bath. On November 4th they restored the communication under protest. The court decided that down to September 29th there had been no refusal or neglect on the part of the company under s. 43 of the Act of 1847 so as to make them liable to a penalty, because the respondent had omitted to tender a sum for the water to be used in the bath. The court considered that s. 70 of the general Act requiring payment of water rates in advance was, by the interpretation clause (s. 3), made to include any rent, reward or payment to be made to the undertakers for a supply of water, and therefore included the case of water to be supplied to a bath and paid for by measurement. As regards the period from September 29th the court decided, "After the notice of the 29th of September it appears to us that the company were in default in refusing to supply water for ordinary use and for the water-closet, and that they were not entitled to insist upon the outlet pipe of the bath being removed. Although the company cannot be convicted for the refusal to supply between the 20th and 29th of September, because the Act only authorises the imposition of a penalty where the water rate or remuneration for the supply required has been paid or tendered in advance, yet they were not, in our opinion justified in cutting off the supply, and consequently do not fall within the principle laid down in *Sheffield Waterworks Co.* v. *Wilkinson* (1879), 4 C. P. D. 410, and were not entitled to require Mr. Brooks to renew the communication."

Water was supplied to a dwelling-house by a water company by means of a service pipe connected with the company's mains. In this service pipe, at a point between the house and the main, was a stop-cock provided by the landlord of the house, to whom belonged the service pipe and the stop-cock. There being a leak in the service pipe between the stop-cock and the house, the company, after notice to the tenant of the existence of the leak, turned down the stop-cock to prevent waste, and thereby turned off the water supply from the house, and the water remained turned off until the leak was repaired by the landlord, when it was turned on again by the landlord's workmen opening the stop-cock. There was no intention on the part of the company to withdraw the supply except for the immediate purpose of stopping the leak. A magistrate having found, on the above facts, that there was no "cutting off of the water supply" or "ceasing to supply the house with water" within the meaning of s. 49 of the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), so as to render it necessary that notice should be given to the sanitary authority:—*Held*, that the question whether or not the water company had cut off the water supply was a question of fact rather than a question of law, and that the magistrate having found that there was no cutting off within the meaning of the section, there was no ground for overruling his finding as being wrong in point of law (*Young, on behalf of the Vestry of St. Mary, Battersea* v. *Southwark and Vauxhall Water Co.* (1893), 69 L. T. 144).

Referring to the above section, Cave, J., observed in *Sheffield Waterworks* v. *Carter*, *supra:* "Section 43 imposes a penalty on the company for neglecting or refusing to furnish to any owner or occupier entitled under that or the special Act to receive a supply of water, which shows conclusively that the legislature contemplated the possibility of a supply being made compulsory by the special Act, in addition to the supply for domestic purposes made compulsory by the general Act."

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NOTE.

By s. 79 of the East London Waterworks Act, 1853, "the company may, at their own instance, and shall at the request of any owner or occupier of any premises situate in or adjoining any street in which any main or service pipe of the company is or shall be laid, and who requires a supply of water by measure for purposes other than the purposes in respect of which rates are by this Act provided or limited, by means of communication pipes and other necessary and proper apparatus, to be provided, laid, and maintained at the cost of the person requiring such supply, afford a supply of water by meter," at certain rates. It was held that the word "premises" did not include land, and that therefore the owner or occupier of building land upon part of which the foundations only of houses were laid out, and which was otherwise unbuilt upon, was not entitled under the section to demand a supply of water on the land for use in his building operations (*Metropolitan Water Board* v. *Paine*, [1907] 1 K. B. 285). See now as to supply for building purposes in the area of the Metropolitan Water Board s. 17 of the Metropolitan Water Board (Charges) Act, 1907, *post*, p. 695.

Pipes to be laid by the undertakers.

And with respect to the communication pipes to be laid by the undertakers, be it enacted as follows:

Undertakers to lay down communication pipes, on request of occupier, and with the consent of owners, in houses of limited value.

44. The undertakers shall, upon the request of the owner of any dwelling-house in any street in which pipes shall have been laid down by them, the annual value of which house shall not exceed ten pounds, or upon request of the occupier, with the consent in writing of the owner or reputed owner of any such house, or of the agent of such owner, and upon payment or tender of the proportion of water rate in respect of such house by this or the special Act, made payable in advance, lay down communication pipes and other necessary works for the supply of such house with water for domestic or other purposes, and shall keep the same in repair, and thereupon the occupier of such house shall be entitled to have a sufficient supply of water for his domestic purposes from the undertakers; and the undertakers may charge for such pipes and works, in addition to the water rate, such reasonable annual rent as shall be agreed upon, or, in case of dispute, as shall be settled by such inspector as aforesaid, when appointed, and in the meantime as shall in England or Ireland be settled by two justices, and in Scotland by the sheriff; and such rent shall be chargeable on and recoverable from the occupier, or, in his default, from the owner of such house, at the same times and in the same manner as water rates; and such pipes and other works shall not be subject to distress or to the landlord's hypothec for rent, nor to be taken in execution under any process of a court of law or equity, or under any fiat or sequestration in bankruptcy, against such occupier or against such owner, unless he shall have become the proprietor of the said pipes and works under the provisions hereinafter contained.

So far as it was applicable to the Metropolitan Water Board this section was repealed by the Metropolitan Water Board (Charges) Act, 1907, *post*, p. 684.

Sect. 44, *supra*, is confined in its operation to houses the annual value of which does not exceed £10. In all other cases the owner or occupier is empowered to lay his own communication pipe (ss. 52 and 53). Whether he may break up the street to repair it is another question, as to which see *Chapman* v. *Fylde Waterworks Co.* and *Colne Valley Water Co.* v. *Hall*, cited *ante*, p. 484.

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Note.

In *Parnell* v. *Portsmouth Waterworks Co.* (1910), 75 J. P. 99, a leak was discovered in a communication pipe, and notice was given by the company to the plaintiff to repair under threat of the supply of water being cut off. Plaintiff repaired the pipe and subsequently brought an action to recover the amount, on the ground that the repairs should have been done at the cost of the company. There was no evidence as to who had laid the pipe nor as to whom it belonged. *Held*, by the Divisional Court, that the company were not bound to repair.

The Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 57, provides that for the purpose of enabling any local authority to supply water, this and certain other sections of the Act of 1847 shall be incorporated with that Act; provided (1) that the provisions with respect to the communication pipes to be laid by the undertakers and the inhabitants respectively shall apply only to districts, or parts of districts, where the local authority lay any pipes for the supply of any of the inhabitants thereof; (2) that any dispute authorised or directed by any of the said incorporated provisions to be settled by an inspector or two justices, shall be settled by a court of summary jurisdiction; and (3) that s. 44 shall, for the purposes of that Act, have effect as if the words " with the consent in writing of the owner or reputed owner of any such house or of the agent of such owner" were omitted therefrom; and (4) that any rent for pipes and works paid by an occupier under the above section may be deducted by him from any rent from time to time due from him to such owner.

In incorporating the Act of 1847, the Acts of municipal corporations supplying water frequently except the words " with the consent in writing of the owner or reputed owner of any such house or of the agent of such owner," following the precedent of the Public Health Act, 1875. See, *e.g.*, Bath Corporation Water Act, 1903 (3 Edw. 7, c. ccvii.), s. 2.

See further s. 72, *post.*

Penalty on undertakers for refusal to lay communication pipes.

45. If, upon such request and consent, and upon tender or payment of such proportion of rate as aforesaid, the undertakers for seven days neglect or refuse to lay down such communication pipes or other works, they shall be liable to forfeit to the person so making such request the sum of five pounds, and a further sum of forty shillings for every day during which such refusal or neglect shall continue after seven days from the making of such request and tender as aforesaid.

Undertakers to be at liberty to remove pipes, and recover expenses of owners or occupiers.

46. If the occupier for the time being of the house in which any such communication pipes or other works and engines shall have been laid down by the undertakers refuse to pay for a supply of water, or if such house be unoccupied for twelve months, the undertakers may demand from the owner thereof payment of the amount of the principal money invested by them in providing and laying down such communication pipes and other works and engines; and if such owner, after ten days notice given to him by the undertakers, neglect or refuse to pay such principal money, the undertakers may enter the house and remove such pipes and other works; and the balance of such principal money, after deducting the value of such pipes and other works, with all arrear of rent of such pipes and works, shall, in default of payment, be recovered, with the costs incurred, from the owner or from the occupier for the time being in the same manner as water rates are directed by this or the special Act to be recovered: Provided always, that no greater sum shall be recovered from any such occupier than

No greater sum to be

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recovered from occupiers than amount of rent due.

the amount of rent for the time being owing by him, unless he refuse to discover the amount of rent owing by him; and that every such occupier shall be entitled to deduct from the amount of rent payable by him the sum so recovered from him, or which he shall have paid, on demand.

Owners to be at liberty to purchase the pipes.

47. The owner or reputed owner of any house where any such communication pipes or other works shall have been laid down by the undertakers may at any time pay off the amount then due to the undertakers in respect of the costs of providing and laying down such pipes and works, and all rent at that time due in respect thereof, and thereupon such pipes and works shall become the property of such owner, and all further rent in respect thereof shall cease to accrue to the undertakers.

Pipes to be laid by the Inhabitants.

And with respect to the communication pipes to be laid by the inhabitants, be it enacted as follows:

Power to inhabitants to lay service pipes, giving the undertakers notice of the same.

48. Any owner or occupier of any dwelling-house or part of a dwelling-house within the limits of the special Act who shall wish to have water from the waterworks of the undertakers brought into his premises, and who shall have paid or tendered to the undertakers the portion of water rate in respect of such premises, by this or the special Act directed to be paid in advance, may open the ground between the pipes of the undertakers and his premises, having first obtained the consent of the owners and occupiers of such ground, and lay any leaden or other pipes from such premises, to communicate with the pipes of the undertakers, such pipes to be of a strength and material to be approved of by the undertakers, or, in case of dispute, to be settled in England or Ireland by two justices, and in Scotland by the sheriff, or in either case by the inspector to be appointed as aforesaid: Provided always, that every such owner or occupier shall, before he begins to lay any such pipe, give to the undertakers fourteen days notice of his intention to do so.

See also s. 52, *infra*, and the notes thereto.

Communication with the pipes of the undertakers to be made under the superintendence of their surveyor.

49. Before any pipe is made to communicate with the pipes of the undertakers, the person intending to lay such pipe shall give two days notice to the undertakers of the day and hour when such pipe is intended to be made to communicate with the pipes of the undertakers; and every such pipe shall be so made to communicate under the superintendence and according to the directions of the surveyor or other officer appointed for that purpose by the undertakers, unless such surveyor or officer fail to attend at the time mentioned in the said notice; and in case of any dispute as to the manner in which such pipe shall be so made to communicate, it shall in England or Ireland be settled by two justices, and in Scotland by the sheriff, or in either case by the inspector to be appointed as aforesaid.

See *Gale* v. *Rhymney, &c. Water Co.*, cited under s. 53, *post*, p. 498.

Bore of service pipes.

50. The bore of any such pipe as last aforesaid shall not exceed the prescribed limits, and where no limit shall be prescribed it shall not exceed half an inch, except with the consent of the undertakers.

Under an agreement of 1879, terminable by notice, the guardians of the poor of South Dublin Union agreed to take water for their workhouse from the Dublin Corporation at a price per 1,000 gallons. At first the supply was afforded by means of a three-inch pipe which was afterwards replaced by a six-inch pipe put in with the consent of the corporation. The payments under the agreement averaged £500 per annum. If the water rate had been levied in the usual way as for domestic supply the rate would have been £41 per annum. After the decision of the *Liskeard Case* (1881), *ante*, p. 472, the guardians claimed to be entitled to a supply on the footing of the workhouse being a dwelling-house within the meaning of the Acts. Eventually in 1898 they gave notice to discontinue the agreement but continued to receive a supply by means of the six-inch pipe, but no rate was ever levied or paid before action. The corporation insisted that the guardians were not entitled to be supplied by a pipe the bore of which exceeded half an inch. The Corporation's Special Act of 1861 (24 & 25 Vict. c. clxxiv.) incorporated the Waterworks Clauses Act, 1847, and contained the following section (similar in substance to s. 35 of the Waterworks Clauses Act, 1847) :—

> "The corporation shall, as soon as conveniently may be done after the completion of the works by this Act authorised, provide and keep in the pipes now laid down or to be laid down by them, a supply of pure and wholesome water sufficient for the domestic use of the inhabitants of all houses in the borough of Dublin ; . . . "

Eventually the corporation commenced an action for an injunction as regards the use of the six-inch pipe and to recover damages in respect of the water taken over and above what a half-inch pipe would have afforded. The action was tried before Palles, C.B. The damages in respect of the excess water taken was by consent assessed at £1,340 *5s. 3d.* Palles, C.B., ruled that as the six-inch pipe had been laid down during the continuance of the agreement of 1879, and for the purposes of a supply to be paid for under that agreement, the defendants were not entitled after they had terminated that agreement to take water by that pipe against the will of the corporation ; that although the guardians were entitled to be supplied on the dwelling-house principle they were not entitled to more water than could be discharged by a pipe half an inch in diameter. He accordingly gave judgment for the £1,340 *5s. 3d.* and granted an injunction restraining the defendants from taking, without the consent of the plaintiffs, the plaintiff's water by any pipe, the bore of which should exceed half an inch as provided by s. 50 of the Waterworks Clauses Act, 1847. The case afterwards on appeal came before the King's Bench Division (Madden, Boyd, and Barton, JJ.), with the result that Madden and Barton, JJ. upheld the decision of Palles, C.B., and Boyd, J., dissented. Finally the case came before the Court of Appeal (Fitzgibbon, Walker and Holmes, L.JJ.), who unanimously reversed the above decision and ordered a new trial. Fitzgibbon, L.J., held that the water was supplied after the notice without interruption and was not unlawfully taken, and therefore that damages could not be recovered ; that the domestic water rate and nothing else could be recovered. Referring to s. 43 of the special Act, he said there was "an obligation on the corporation to give to the owner or occupier of any house, a sufficient supply for domestic use of all its inhabitants—the quantity being measured not by the size of the house nor by the bore of any pipe, but by the reasonable requirements of the inhabitants, and their right to receive this supply can be suspended or lost only by non-compliance of the domestic rate or by non-compliance of the regulations for prevention of waste and misuse, which non-compliance under s. 48 is punishable by penalty and by cutting off the supply. There is therefore no inconsistency between the incorporated clause 50 and the principal Act, but if there were, s. 43 which defines the duty of the corporation is the dominant provision." Walker, L.J., said that upon the true construction of the statute, he thought that the obligation to furnish a domestic supply is one which overrides all provisions about bore of pipes. Holmes, L.J.,

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referring to the words "or part of a dwelling-house" in s. 48 of the Act of 1847, observed that "he saw nothing that either directly or inferentially prevents the laying down of two or more half-inch pipes to the same dwelling-house provided they are needed to furnish a sufficient supply for its inhabitants." He considered that the workhouse consisted of several houses, and he added, "Assuming that the union buildings are a single house and that there can be only one communication pipe connecting it with the plaintiffs' main pipe, I am prepared to hold that if a half-inch communication pipe will not discharge sufficient water for the domestic use of the inhabitants, the plaintiffs are bound to consent to such an increased bore as will satisfy what I regard as the governing feature of the statute, a sufficient supply of water for domestic use" (*Dublin Corporation* v. *Guardians of Poor of South Dublin Union*).* See also the decision of BUCKLEY, J., in *South West Suburban Water Co.* v. *St. Marylebone Union*, *ante*, p. 472.

See Form of Regulations as to consumers' pipes, in ordinary cases, at p. 720, *post*, and as regards the metropolis, see *post*, p. 716.

Service pipes may be removed after giving notice of the same.

51. Any person who shall have laid down any pipe or other works, or who shall have become the proprietor thereof, may remove the same, after having first given six days notice in writing to the undertakers of his intention so to do, and of the time of such proposed removal, and every such person shall make compensation to the undertakers for any injury or damage to their pipes or works which may be caused by such removal; and every person who shall remove any such pipe or other works without giving such notice as aforesaid shall forfeit to the undertakers a sum not exceeding five pounds, over and above the damage which he may be found liable to pay in any action at law, at the suit of the undertakers, for the damage done to their pipes or works.

Penalty on removing pipes without notice.

See *Chapman* v. *Fylde Waterworks Co.*, *ante*, p. 484.

Power to inhabitants to break up pavements, giving notice of the same.

52. Any such owner or occupier may open or break up so much of the pavement of any street as shall be between the pipe of the undertakers and his house, building, or premises, and any sewer or drain therein, for any such purpose as aforesaid, doing as little damage as may be, and making compensation for any damage done in the execution of any such work: Provided always, that every such owner or occupier desiring to break up the pavement of any street, or any sewer or drain therein, shall be subject to the same necessity of giving previous notice, and shall be subject to the same control, restriction, and obligations in and during the time of breaking up the same, and also reinstating the same, and to the same penalties for any delay in regard thereto, as the undertakers are subject to by virtue of this or the special Act.

Cf. s. 48, *supra*.

As to the meaning of the words "doing as little damage as may be," see *R.* v. *East and West India Docks, etc. Rail. Co.* (1853), 22 L. J. Q. B. 380, cited *ante*, p. 439.

Where an owner, acting under the power given by this section, opened a street to lay a service pipe, and carelessly filled up the hole, and the connection with the main was, at the same time, effected by a waterworks company, it was held that the owner and not the company was responsible for reinstating the street, and that the word "pavement" in this section was

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* The foregoing facts have been obtained from a transcript of the shorthand writer's notes.

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not confined to a foot pavement (*Glover* v. *East London Waterworks Co.* (1868), 16 W. R. 310).

By the Folkestone Waterworks Act, 1888 (51 & 52 Vict. c. xxv.), the company obtained power to attach a suitable screw-down stop-valve to the communication pipe at or near the place where it enters the consumer's premises. A consumer having broken up the pavement in front of his house for the purpose of laying such a stop-valve and guard box, was restrained at the suit of the corporation, as the road authority (*Mayor, etc. of Folkestone* v. *Downing*, Jl. of G. L., August 13th, 1889, vol. 54, p. 313). See *Ward* v. *Folkestone Waterworks Co.* (1890), 24 Q. B. D. 334, *ante*, p. 485.

The power of an owner or occupier to open or break up streets is confined to the occasion of laying the service pipe, or of removing the same under s. 51. He has no power to break up the street for the purpose of repairs to the service pipe. That power rests exclusively with the company (*Chapman* v. *Fylde Waterworks Co.*, [1894] 2 Q. B. 599). And see *Colne Valley Water Co.* v. *Hall*, cited therewith at p. 484, *ante*.

A., the owner of a house and land within the borough of the defendant corporation, was supplied with water for his premises through a private service pipe connected with the water mains of a company serving the district. This service pipe was laid for a considerable distance along a road vested in the defendants as the highway authority, but the soil of which belonged to A. He entered into an arrangement with the plaintiff, a neighbouring owner, to allow the plaintiff to obtain a supply from the same company by tapping, with their consent, his service pipe. The defendants obstructed the plaintiff's workmen, who broke up the road between his property and A.'s service pipe. The plaintiff brought an action to restrain such interference. *Held*, that the indirect connection by means of A.'s pipe was sufficient to bring the case within s. 52, and that the plaintiff was entitled to break up the roadway (*Pearson* v. *Tenterden Corporation* (1910), 74 J. P. 405).

As regards the area of the Metropolitan Water Board, it is by s. 19 of the Metropolitan Water Board (Charges) Act, 1907, provided that "for the purpose of complying with any obligation under that Act to maintain any pipe or apparatus the person liable to maintain the same shall have the like power to open the ground, as is conferred upon him by ss. 48 and 52 of the Waterworks Clauses Act, 1847, in relation to the laying of communication pipes."

Owners or occupiers entitled to demand a supply of water for domestic purposes.

53. Every owner or occupier of any dwelling-house or part of a dwelling-house within the limits of the special Act, shall when he has laid such communication pipes as aforesaid, and paid or tendered the water rate payable in respect thereof, according to the provisions of this and the special Act, be entitled to demand and receive from the undertakers a sufficient supply of water for his domestic purposes.

See notes to s. 35, *ante*, pp. 466 *et seq.* The water rate is payable quarterly in advance (see notes to s. 70, *post*, p. 513).

By s. 80 of the Rhymney and Aber Valleys Gas and Water Act, 1898 (61 & 62 Vict. c. ccxlv.), the company were authorised to make byelaws for certain purposes, and had made a byelaw to the effect that every house supplied by them with water should have its own communication pipe from the main. A builder in the course of erecting six small houses applied to the company's manager in the district for permission to put in one communication pipe, to serve two houses, and so to make three communication pipes serve for six houses, and permission was granted. The builder employed the company to lay the communication pipes. After they were laid the builder requested the company to connect them with their mains. This the company refused to do, relying on the byelaws they had made. The plaintiff thereupon, after giving the necessary notices, caused the

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communication pipes to be connected with the company's main. Thereupon the company severed the connection and stopped up the pipes. The plaintiff brought his action for a declaration that he was entitled to receive from the company a sufficient supply of water; and for an injunction. At the trial the jury found that the company's manager in the district did give the permission above referred to, and also that he had authority to bind the company in the matter. The contention of the defendant company was that the only remedy in the circumstances was for penalty, and they relied upon *Atkinson* v. *Newcastle and Gateshead Water Co.* (*ante*, p. 488). The Court of Appeal decided that the severing of the connection was a wrongful act on the part of the water company, and that the act was not one for which a penalty was provided under ss. 43 or 53 of the Waterworks Clauses Act, 1847, or otherwise, and an injunction restraining the company from preventing the plaintiff from exercising his statutory right of reconnecting his communication pipe with the company's main was granted (*Gale* v. *Rhymney and Aber Valleys Water Co.* (1903), 67 J. P. 430).

A liability to pay for water will arise, although there has been no demand or express contract, if water is, in fact, supplied and used under circumstances from which a contract can be implied. A recent case, where a local education authority were held liable for water supplied to a non-provided school might here be referred to. Before 1902 a water company supplied the managers of a voluntary school with water for the purposes of the school buildings. After the Education Act, 1902, came into force the water company continued to supply water to the school, but they made no express contract for the supply of such water. They sent in their bills for the water, which was supplied by meter, to the managers of the school. The managers included these charges for water in the quarterly accounts of their expenditure on the school sent by them to the local education authority. The local education authority paid the water company directly, and receipts were given by the company to the local education authority. It was held that the authority were liable to the water company for the supply of water to the school (*Trowbridge Water Co.* v. *Wilts County Council*, [1909] 1 K. B. 824).

Protection of water.

And with respect to waste or misuse of the water supplied by the undertakers, be it enacted as follows:

Persons using the water to provide cisterns and cocks.

54. If by the special Act it be provided that the water to be supplied by the undertakers need not be constantly laid on under pressure, every person supplied with water shall, when required by the undertakers, provide a proper cistern to hold the water with which he shall be so supplied, with a ball and stop cock in the pipe bringing the water from the works of the undertakers to such cistern, and shall keep such cistern, ball, and stop cock in good repair, so as effectually to prevent the water from running to waste; and in case any such person shall, when required by the undertakers, neglect to provide such cistern, ball, or stop cock, or to keep the same in good repair, the undertakers may cut off the pipe or turn off the water from the premises of such person until such cistern and ball and stop cock shall be provided or repaired, as the case may require.

Penalty for neglect.

See further the various provisions on this subject contained in the Waterworks Clauses Act, 1863, *post*, pp. 541 *et seq.*

To the powers for the prevention of waste given by the general Acts, special powers are superadded by special Acts where constant service is afforded. See Chapter on "Waste and Misuse of Water," *post*. The Barnet District Gas and Water Act, 1904, s. 20, enacts that this section shall apply, notwithstanding the fact that constant supply is afforded.

See also the Metropolis Water Act, 1852, s. 26, p. 553; the Metropolis Water Act, 1871, ss. 17 *et seq.*, p. 562, and the "Regulations" under these

Acts, *post;* and also the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 50.

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Penalty for suffering cisterns, etc., to be out of repair.

55. Every person supplied with water by the undertakers who shall suffer any such cistern, pipe, ball, or stop cock to be out of repair, so that the water supplied to him by the undertakers shall be wasted, shall forfeit to the undertakers for every such offence a sum not exceeding five pounds.

This section is re-enacted with material additions by s. 17 of the Act of 1863. See *post,* p. 541. Accordingly, the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66), repeals this section so far as it relates to special Acts with which the Act of 1863 is incorporated.

Undertakers may repair cisterns, etc., and recover the expenses.

56. The undertakers may repair any such cistern, pipe, ball, or stop cock, so as to prevent any such waste of water, and the expenses of such repair shall be repaid to them by the person so allowing the same to be out of repair, and may be received * as damages.

(* *Sic.*)

Power to surveyor employed by undertakers to enter houses to inspect, etc.

57. The surveyor, or any other person acting under the authority of the undertakers, may, between the hours of nine of the clock in the forenoon and four of the clock in the afternoon, enter into any house or premises supplied with water by virtue of this or the special Act in order to examine if there be any waste or misuse of such water ; and if such surveyor or other person at any such time be refused admittance into such dwelling-house or premises for the purpose aforesaid, or be prevented from making such examination as aforesaid, the undertakers may turn off the water supplied by them from such house or other premises.

See further, the provisions in regard to protection of water in the Act of 1863, *post,* p. 541.

For an instance of a special clause authorising entry to inspect fittings see s. 33 of the Torquay Corporation Water Act, 1903 (3 Edw. 7, c. cvi.), which provides for a penalty of £5 for refusal of admittance.

Penalty for allowing persons to use the undertaker's water.

58. Every owner or occupier of any tenement supplied with water under this or the special Act who shall supply to any other person or wilfully permit him to take any such water from any cistern or pipe in such tenement, unless for the purpose of extinguishing any fire, or unless he be a person supplied with water by the undertakers, and the pipes belonging to him be, without his default, out of repair, shall forfeit to the undertakers for every such offence a sum not exceeding five pounds.

Penalty for taking the undertakers' water without agreement.

59. Every person who, not having agreed to be supplied with water by the undertakers, shall take any water from any reservoir, watercourse, or conduit belonging to the undertakers, or any pipe leading to any such reservoir, watercourse, or conduit, or from any cistern or other like place containing water belonging to the undertakers, other than such as may have been provided for the gratuitous use of the public, shall forfeit to the undertakers for every such offence a sum not exceeding ten pounds.

This section is not aimed at persons improperly taking water from a tap in an unoccupied house, but at persons taking water under the immediate control of the undertakers before it is delivered to a private owner (*Piercy* v.

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Pope (1881), 30 W. R. 60). See, however, s. 20 of the Waterworks Clauses Act, 1863, *post*, p. 543, which re-enacts this section with material additions. Accordingly, the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66), repeals the section in the text so far as it relates to special Acts with which the Act of 1863 is incorporated.

For a case in which a householder, instead of having a direct supply in the ordinary way to a water-closet, constructed an apparatus by which water first used for ordinary domestic purposes was then thrown down a receptacle so as to flush it, and the magistrates refused to convict under a clause in the special Act as to the using of water for any purpose other than that agreed upon, and the court, on a case stated, upheld that decision, see *Evans* v. *Gornall* (1892), 8 T. L. R. 602.

Penalty for destroying valves, etc.

60. Every person who shall willfully or carelessly break, injure, or open any lock, cock, valve, pipe, work, or engine belonging to the undertakers, or shall flush or draw off the water from the reservoirs or other works of the undertakers, or shall do any other wilful act whereby such water shall be wasted, shall forfeit to the undertakers for every such offence a sum not exceeding five pounds.

Fouling the water.

And with respect to the provision for guarding against fouling the water of the undertakers, be it enacted as follows :

Penalties for causing the water of the undertakers to be fouled, etc.

61. Every person who shall commit any of the offences next hereinafter enumerated, shall for every such offence forfeit to the undertakers a sum not exceeding five pounds ; (that is to say,)

Every person who shall bathe in any stream, reservoir, aqueduct, or other waterworks belonging to the undertakers or wash, throw or cause to enter therein any dog or other animal :

Every person who shall throw rubbish, dirt, filth, or other noisome thing into any such stream, reservoir, aqueduct, or other waterworks as aforesaid, or wash or cleanse therein any cloth, wool, leather, or skin of any animal, or any clothes or other thing :

Every person who shall cause the water of any sink, sewer, or drain, steam engine, boiler, or other filthy water belonging to him or under his control, to run or be brought into any stream, reservoir, aqueduct, or other waterworks belonging to the undertakers, or shall do any other act whereby the water of the undertakers shall be fouled :

And every such person shall forfeit a further sum of twenty shillings for each day (if more than one) that such last-mentioned offence shall be continued.

The Waterworks Clauses Act, 1863, ss. 16 *et seq.* (*post*, p. 541), gives the undertakers power to cut off pipes by or through which water is supplied to persons who cause contamination of the water of the undertakers.

The Public Health Act, 1875 (38 & 39 Vict. 55), provides (s. 332) that "Nothing in this Act shall be construed to authorise any local authority to injuriously affect any reservoir canal river or stream or the feeders thereof or the supply quality or fall of water contained in any reservoir canal river stream or in the feeders thereof, in cases where any body of persons or person would, if this Act had not passed, have been entitled by law to prevent or be relieved against the injuriously affecting such reservoir canal river stream feeders or such supply quality or fall of water, unless the local

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authority first obtain the consent in writing of the body of persons or person so entitled as aforesaid." See further, *ante*, pp. 192 *et seq.*

As to the metropolis, see Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), ss. 50—54.

By the Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59), (adoptive), s. 47, penalties are imposed for throwing cinders, ashes, bricks, stone, rubbish, dust, filth, or other matter "which is likely to cause annoyance," into any river, stream, or watercourse.

As to whether a statutory right of fishing, shooting, and sporting, in or upon a reservoir belonging to water undertakers includes a right to stock a reservoir with fish, see *Falkirk and Larbert Water Trustees* v. *Forbes* (1893), 1 S. L. R. 290.

Parliament has in recent years conferred power upon undertakers to purchase and hold lands in the watershed and exercise powers for the protection of waters and waterworks from pollution. In the case of the Thirlmere scheme of the Manchester Corporation, the corporation, under the powers of ss. 9, 20 and 21 of the Act of 1879 (42 Vict. c. xxxvii.), were authorised to acquire practically the whole of the watershed, and under s. 63 they were authorised to purchase by agreement additional lands not exceeding 300 acres. In regard to the Vyrnwy scheme, the Liverpool Corporation Waterworks Act, 1880 (43 & 44 Vict. c. cxliii.), by s. 6 authorised the corporation to take certain lands and easements compulsorily. By s. 28 power was given to take additional land by agreement not exceeding 300 acres. The same section contained the following additional power: "And they may also for the purpose of protecting the Vyrnwy reservoir and the water therein or intended to be collected therein from nuisance, pollution or discolouration acquire by agreement and hold either permanently or temporarily any other lands situate within the drainage area of the Rivers Vyrnwy, Marchnant and Afon Conwy or of their tributaries above the points or levels at which the said rivers respectively will be taken or intercepted under the provisions of this Act. . . ." Sect. 5 of the Birmingham Corporation Act, 1892 (55 & 56 Vict. c. clxxiii.), authorised the taking of certain land compulsorily, s. 10 authorised the purchase by agreement of additional lands not exceeding 100 acres, and by s. 11 they "may hold any lands acquired by them under the powers of the Act and which may in their opinion be necessary for the purpose of protecting their waters and waterworks against pollution nuisances encroachments or injury. . . ." Some other instances may be given, viz.: Heywood Waterworks (Transfer) Act, 1898 (61 & 62 Vict. c. ccxl.), s. 28 gives power to purchase land in the drainage areas not exceeding 600 acres, and s. 32 gives power to enter into agreements with landowners, etc., of drainage areas for more effectually collecting conveying and preserving the purity of the water.* Todmorden Corporation Waterworks Acts, 1891 (61 & 62 Vict. c. ccxli.). By s. 11, for the purposes of protecting their waters and waterworks against pollution nuisance, etc., the corporation are authorised to purchase additional land by agreement not exceeding 100 acres. They are also authorised by s. 15 to enter into agreements with landowners and others interested in the drainage area with reference to the draining of such lands, and for more effectually collecting, conveying, and preserving the purity of the water arising or flowing thereon. By s. 21 of the Keighley Corporation Act, 1898 (61 & 62 Vict. c. cclv.), the corporation are authorised for the purpose of protecting their waters and waterworks against pollution, etc., to purchase by agreement additional land not exceeding 2,300 acres. Sect. 25 enables the corporation to enter into agreements with owners and others interested in lands in the drainage area. See also Bath Corporation Act, 1903 (3 Edw. 7, c. ccvii.), s. 18.

Furthermore, local authorities and companies as undertakers are frequently given the power to make byelaws for securing the purity of the water and prevention of nuisance within the drainage area, compensation being made

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* See a similar provision in Liverpool Act, 43 & 44 Vict. c. cxliii. s. 30.

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to persons injuriously affected by the restrictions imposed by such byelaws. See, *e.g.*, Birmingham Corporation Act, *supra*, s. 50; Heywood Waterworks (Transfer) Act (61 & 62 Vict. c. ccxl.), s. 29; Todmorden Corporation Water Act, 1898 (61 & 62 Vict. c. ccxli.), s. 16; Keighley Corporation Act, 1898 (61 & 62 Vict. c. cclv.), s. 22; Derwent Valley Water Act, 1899 (62 & 63 Vict. c. cclxix.), s. 173; Nelson Corporation Act, 1903 (3 Edw. 7, c. cvii.), s. 10; Bath Corporation Water Act, 1903 (3 Edw. 7, c. ccvii.), s. 20.

In some instances for the protection of streams from pollution power is given to a municipal authority, being water undertakers, to enforce the provisions of the Rivers Pollution Prevention Act, 1876. The following section is taken from the Bury and District Joint Water Board Act, 1903 (3 Edw. 7, c. ccxxxiv.):—

> "15. For the protection from pollution of the reservoirs and works of the Board and of all brooks streams watercourses and waters over which the Board for the time being for the purposes of their water supply have any power of user or in which for the like purposes they are for the time being interested in the event of the sanitary authority for the district within which the pollution occurs refusing or neglecting within the space of one month after being requested by the Board by notice in writing under the hand of the clerk to the Board so to do to enforce with respect to such pollution the provisions of the Rivers Pollution Prevention Act, 1876, the Board shall in respect of such pollution have and may if they think fit from time to time exercise such and the like powers as may for the time being be exercised by a sanitary authority under that Act and the provisions of that Act shall for the purposes aforesaid extend and apply *mutatis mutandis* to the Board."

Sometimes a special section is introduced confined to the subject of sheep washing. The following is taken from the Birmingham Corporation Act, 1892 (55 & 56 Vict. c. clxxiii.), s. 48:—

> "If in the opinion of the Corporation it shall be expedient with the view of preserving the purity of the water to prohibit the washing of sheep in any of the waters which the Corporation are authorised to impound or take under the provisions of this Act the Corporation shall have power to prohibit such washing of sheep provided that before the Corporation carry this provision into effect in respect of any place where it has been the practice to wash sheep the corporation shall provide and maintain in the nearest convenient situation on their own lands another suitable washing place and enclosure and shall also provide the means of pasturage for such sheep during such period as may be necessary to keep such sheep at the washing places and on their coming and return and shall provide the necessary accommodation for the shepherds accompanying such flocks."

The Local Government Board in their Annual Report for 1904—5 [Cd. 2661], say: "A departmental committee appointed to enquire into and report upon British forestry recommended that the attention of corporations and municipalities should be drawn to the desirability of planting with trees the catchment areas of their water supply. We were requested by the Board of Agriculture and Fisheries to furnish them with a list of the municipalities in England and Wales which had acquired the freehold or long leasehold of the catchment areas from which their water supplies were derived together with a statement of the acreage and altitude of the respective areas. We accordingly addressed a circular letter to upwards of 700 local authorities, asking for the required particulars and we forwarded to the Board the terms received from such of those authorities as appeared to have acquired the freehold or long leasehold of water catchment areas," p. clviii.

In an action before the Vice-Chancellor of the County Palatine of Lancaster an injunction was sought by the Bury Corporation to restrain a farmer from polluting a reservoir of the plaintiffs near to his farm, and it was alleged that defendant had allowed the putrefying carcass of a horse to lie in a field close to the streams which fed the reservoir. An interim injunction had been granted, *ex parte*, and since then the carcass had been removed. The only question now was one of costs. Vice-Chancellor Hall is reported to have said "that the defendant had not gone beyond his ordinary rights as tenant of a farm. He was entitled to manure his land, and also, if an animal died on the farm, to dispose of the carcass by burying it or otherwise. . . . He did not blame the corporation for being nervous as to the purity of the source of their supply; but if they found that ordinary agricultural operations interfered with the purity of their water, the proper course for them to take was to get a better collecting ground." He decided that the corporation must pay the costs of the action (*Bury Corporation* v. *Hartley*, Jl. of G. L., February 14th, 1899, p. 379).

The following circular letter, dated December 17th, 1897, was addressed by the Local Government Board to town, urban district, and rural district councils:

Sir,—I am directed by the Local Government Board to call the attention of the council to the subject of the water supply of their district.

The importance of a wholesome supply of water need not be emphasised in view of the serious epidemics of enteric fever which have of recent years been brought about by specific contamination of water supplies in different parts of the country. It is true that this disease, which formerly prevailed somewhat generally in endemic form, has during the last twenty-five years been largely reduced as a cause of death; but, on the other hand, there is now a recurring tendency to sudden localised epidemics, in which the typhoid infection is distributed to large populations by means of the contamination of water delivered from public works of water supply.

The council are the body responsible under the Public Health Acts for securing to the inhabitants of their district a proper and sufficient supply of water, and the Board desire to impress upon them the importance of taking the matter into their serious consideration with the object of guarding their district against dangers the gravity of which has been sufficiently shown by recent examples.

Where the council have themselves constructed or purchased any waterworks it is their duty, in pursuance of s. 55 of the Public Health Act, 1875, to provide a supply of "pure and wholesome" water, and in order to fulfil this obligation it behoves them to exercise every precaution to secure that the water which they deliver to the consumers shall be protected from risk of contamination, whether in connection with the sources from which it is derived or during the course of its storage or distribution, and that where means of filtration are necessary these should be adequate and maintained in a thoroughly efficient condition.

Not only are the council thus under a responsibility for the wholesomeness of the water which they themselves supply, but they should by careful inquiry make themselves acquainted with the sources, nature, and quality of the various supplies in all parts of their district, and, in every case in which the result of their inquiries is unsatisfactory, should take all such steps as may be within their powers with the view of supplementing or improving the supplies.

The Board would observe generally that accurate information should be procured, if not already available, in such matters as the following:

1st. Where Water is Derived from Gathering Grounds or from Springs.

Whether drainage from human habitations, farmyards, and the like finds its way, directly or indirectly, into the reservoir or to any part of the water service; and whether risk of access to the water of human excreta and similar refuse is likely to arise.

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2nd. Where Water is Derived from Deep Wells.

Whether surface or other water, liable to be contaminated by drains, sewers, cesspools, and the like, reaches, or is liable to reach, the wells. The existence and direction of fissures in the strata deserve especial consideration in this respect.

3rd. Where Water is Derived from Shallow Wells.

Whether the wells are so circumstanced that they run risk of contamination by reason of drains, privies, cesspools, or middens, or by the deposit of manure—whether derived from human excreta or not—in or on the ground in the neighbourhood of the wells.

The Board trust that the council will not fail to give their most careful attention to this subject, and that, where it may appear that further works which may be within the powers of the council for the improvement or protection of existing supplies are needed, the council will forthwith, with the assistance of such skilled advice as the circumstances of the case may require, execute the necessary works.

The Board request that a copy of this communication may be furnished to the medical officer of health.

I am, Sir, your obedient servant,
HUGH OWEN,
Secretary.

Penalty for permitting substances produced in making gas to flow into the undertakers' works.

62. Every person making or supplying gas within the limits of the special Act who shall at any time cause or suffer to be brought or to flow into any stream, reservoir, aqueduct, or waterworks belonging to the undertakers, or into any drain communicating therewith, any washing or other substance which shall be produced in making or supplying gas, or who shall wilfully do any act connected with the making or supplying of gas whereby the water in any such stream, reservoir, aqueduct, or waterworks shall be fouled, shall forfeit to the undertakers for every such offence the sum of two hundred pounds; and such penalty shall be recovered, with full costs of suit, in any of the superior courts; but such penalty shall not be recoverable unless it be sued for during the continuance of the offence, or within six months after it has ceased.

Penalty to be sued for within six months.

See notes to s. 21 of the Gasworks Clauses Act, 1847, *ante*, pp. 191.

Daily penalty during the continuance of the offence.

63. In addition to the said penalty of two hundred pounds, and whether such penalty have been recovered or not, the person making or supplying gas as aforesaid shall forfeit to the undertakers the sum of twenty pounds, to be recovered in like manner, for each day during which such washing or substance shall be brought or shall flow as aforesaid, or during which the Act shall continue by which such water is fouled, after the expiration in either case of twenty-four hours from the time when notice of the offence has been served on such person by the undertakers.

Penalty on gas makers causing water to be fouled.

64. Whenever the water supplied by the undertakers shall be fouled by the gas of any person making or supplying gas within the limits of the special Act, such person shall forfeit to the undertakers for every such offence a sum not exceeding twenty pounds, and a further sum not exceeding ten pounds for each day during which the offence shall continue after the expiration of twenty-four hours from the service of notice of such offence.

See s. 25 of the Gasworks Clauses Act, 1847, *ante*, p. 197.

Power to examine gas pipes, to ascertain cause of water being fouled.

65. For the purpose of ascertaining whether the water of the undertakers be fouled by the gas of any person making or supplying gas within the limits of the special Act, the undertakers may dig up the ground, and examine the pipes, conduits and works of the persons making or supplying gas; provided that before proceeding so to dig and examine the undertakers shall give twenty-four hours notice in writing to the person so making or supplying gas of the time at which such digging and examination is intended to take place, and they shall give the like notice to the persons having the control or management of the pavements or place where such digging shall take place, and they shall be subject to the like obligation of reinstating the road and pavement, and to the same penalties for delay or any nonfeasance or misfeasance therein, as hereinbefore provided with respect to roads and pavements broken up by them for laying their pipes.

See the similar enactment (s. 26) in the Gasworks Clauses Act, 1847.

The expenses to abide the result of the examination.

66. If upon such examination it appear that such water has been fouled by any gas belonging to such person, the expenses of the digging examination, and repair of the street or place disturbed in any such examination shall be paid by the person making or supplying gas; but if upon such examination it appear that the water has not been fouled by the gas of such person, then the undertakers shall pay all the expenses of the examination and repair, and also make good to the said person any injury which may be occasioned to his works by such examination.

How expense to be ascertained.

67. The amount of the expenses of every such examination and repair, and any injury done to the undertakers, shall, in case of any dispute about the same, together with the costs of ascertaining and recovering the same, be ascertained and recovered in the same manner as damages for the ascertaining and recovery whereof no special provision is made are directed to be ascertained and recovered.

Water rates.

And with respect to the payment and recovery of the water rates, be it enacted as follows:—

Rates to be payable according to the annual value of the premises.

68. The water rates, except as hereinafter and in the special Act mentioned, shall be paid by and be recoverable from the person requiring, receiving, or using the supply of water, and shall be payable according to the annual value of the tenement supplied with water, and if any dispute arises as to such value the same shall be determined by two justices.

Meaning of "annual value" in metropolitan area.

By the Water Rate Definition Act, 1885 (48 & 49 Vict. c. 34), s. 1, it is provided that "the words 'annual value of the tenement supplied with water' in the sixty-eighth section of the Waterworks Clauses Act, 1847, shall, within the unions and parishes to which the Valuation of Property

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(Metropolis) Act, 1869, extends, mean the rateable value as settled from time to time by the local authority as duly constituted. Provided that where the water rate is chargeable on the annual value of a part only of any hereditament entered in the valuation list, such annual value shall be a fairly apportioned part of the rateable value of the whole tenement ascertained as aforesaid, the apportionment in case of dispute to be determined in manner provided by the said section." Section 2 further provides that "the Waterworks Clauses Act, 1847, and this Act shall, for the purposes of this Act, be construed together as one Act, and the provisions of this Act shall to that extent be held to repeal and supersede such of the provisions of that Act as are inconsistent with this Act." The area embraced in the Valuation of Property (Metropolis) Act, 1869, is the metropolis as defined by the Metropolis Management Act, 1855.

Under the Metropolitan Water Board (Charges) Act, 1907, "rateable value" is now the basis of the charge for domestic supply throughout the whole of the area of the board's jurisdiction. See s. 13 of the Act, *post*, p. 693. While the Acts just referred to brush aside difficulties as to the meaning of the phrase "annual value" as regards the district of the Metropolitan Water Board, the legal decisions on s. 68 still have their value especially as affecting other parts of the country.

"Annual value" and like phrases.

By a waterworks Act, the rates at which water was to be supplied for domestic purposes were to be assessed upon the annual value of the premises; and by an Act which amended the former, if the owner of any dwelling-house, the yearly rent or value whereof shall not amount to £13, or which, whatever might be the annual value thereof, should be let to weekly or monthly tenants, or in separate apartments, should be desirous of paying a reduced water rent by the year for the same, whether occupied or not, the council might compound with such owner for the payment of the water rents, payable by virtue of the Acts in respect of such dwelling-house, at any sum not less than three-fourths of the annual water rent for the same; and all such compositions shall be entered in the books of the council, and shall be recoverable in like manner as the rents and charges authorised by the Act are by law recoverable. By a composition-paper, A., as the owner of dwelling-houses let to weekly tenants, agreed with the corporation to compound for the water rates, and in a schedule thereto stated the "rental to be 4*s.* 6*d.* per week, and 3*s.* 6*d.* per week, respectively." The composition-paper contained a stipulation, that if at any time it should be ascertained that the rental of such houses was not truly and correctly set forth in the schedule, the corporation might be at liberty to amend the same by inserting therein the true and correct amounts of such rental, and might recover against A. the additional water rents due in respect thereof. The rents of the houses were, in point of fact, 6*d.* per week, respectively, more than the sums stated in the schedule, A. claimed to deduct that sum in respect of poor and other rates, which by agreement with the tenants were paid by him:—*Held*, that A. was not entitled to make such deduction, but that the corporation were entitled under the agreement to receive the composition upon the amount of rent paid by the tenants (*Rook* v. *Liverpool* (*Mayor, etc.*) (1859), 7 C. B. (N.S.) 240). *Held*, also, that the production of the composition-paper, and proof that no demand of water rates had been made upon the tenants, was sufficient evidence that the composition had been made, without showing that any entry thereof had been made in the books of the council (*ibid.*). This case turned on the construction of the agreement which had been come to between the parties, and not on the terms of the statute. On this ground it was distinguished by the judges, who decided the later case of *Sheffield Waterworks Co.* v. *Bennett*, *infra*.

In *R.* v. *Dodd* (1865), L. R. 1 Q. B. 18, it was decided that a voluntary payment by a landlord to the Bilston improvement commissioners (who were authorised by Parliament to supply water) for the supply of water to a house occupied by his tenant and rateable to the poor, was not a tenant's rate or an expense necessary to maintain the premises in a state to command their annual rent within the meaning of the Parochial Assessments Act, 1836, and ought not to be deducted from the gross estimated rental of the premises in

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order to ascertain their net annual value under that Act (*S. C. sub nom. R.* v. *Bilston Overseers* (1865), 35 L. J. M. C. 73).

By their local Act, a water company was bound to supply water "at the following rate per annum, that is to say, where the *rent* of such dwelling-house" shall not amount to £7 per annum, at a rate not exceeding 6 per cent. per annum on such *rent*, but not exceeding 7*s.* 2*d.* per annum, and so on in a graduated scale. The defendant was owner of numerous small houses supplied with water by the plaintiffs, in respect of which he paid, either under statutory obligation or by voluntary agreement, the poor rate, water rate and district rate. It was held that "rent" was equivalent to annual value, and therefore the ratepayer, in estimating the amount of his rent for the purpose of the rate, might deduct the amount of the poor rates, water rates and district rates (*Sheffield Waterworks Co.* v. *Bennett* (1872), L. R. 7 Ex. 409; affirmed in the Exchequer Chamber (1873), L. R. 8 Ex. 196).

In the case of *Dobbs* v. *Grand Junction Waterworks Co.* (1883), 9 App. Cas. 49, the House of Lords (reversing the decision of the Court of Appeal) decided that the phrase "annual value" in that company's Acts meant "net annual value" as defined in the Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96) s. 1, which provides that "no rate for the relief of the poor in England and Wales shall be allowed by any justices, or be of any force, which shall not be made upon an estimate of the net annual value of the several hereditaments rated thereunto; that is to say, of the rent at which the same might reasonably be expected to let from year to year free of all usual tenants' rates and taxes, and tithe commutation rentcharge, if any, and deducting therefrom the probable average annual cost of the repairs, insurance and other expenses, if any, necessary to maintain them in a state to command such rent. Provided always, that nothing herein contained shall be construed to alter or affect the principles or different relative liabilities, if any, according to which different kinds of hereditaments are now by law rateable." It appeared that the company were, by a special Act of 1826, authorised to supply water to certain parts of the metropolis for domestic purposes at certain rates per cent. per annum, payable "according to the actual amount of the rent, where the same can be ascertained, and where the same cannot be ascertained, according to the actual amount or annual value upon which the assessment to the poor's rate is computed in the parish or district where the house is situated." By a later special Act of 1852, the company were authorised to supply the water "where the annual value of the dwelling-house or other place supplied shall not exceed £200 at a rate per cent. per annum on such value not exceeding £4, and where such annual value shall exceed £200 at a rate per cent. per annum on such value not exceeding £3." The particular occupier in this case was a lessee for a long term at a ground rent, and paid no rent except the ground rent. In the course of the arguments, various public Acts were cited, showing the meaning which Parliament had attached to such phrases as "annual rent," "annual value," and the like; and amongst others the Parochial Assessments Act, 1836, with its definition of "net annual value." The decision of the House of Lords was that whether the special Act of 1852 repealed or merely abrogated or superseded the Act of 1826, the phrase "annual value" must be interpreted as used in the Act of 1852, and that the words "annual value" in the Act of 1852 meant the same thing as "net annual value," as defined in the Parochial Assessments Act, 1836; and furthermore, that "annual value" meant the same thing in the Act of 1826 as in the Act of 1852. In this case the fortunes of the litigants varied considerably in the course of the litigation. The police magistrate decided in favour of the company, but stated a case. The Queen's Bench Division decided in favour of the appellant, that is, for rateable value. The Court of Appeal reversed this decision, and decided in favour of the company. The House of Lords finally reversed the Court of Appeal, and decided in favour of rateable value.

By 1 & 2 Geo. 4, c. cxiv., s. 8, the churchwardens of a certain parish were directed and required in each and every year to make a rate for certain

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purposes "on the full annual rent or value" of all houses, etc., rated or rateable for the relief of the poor of the parish:—*Held*, that the words "full annual rent or value" were equivalent to "full net annual value," and that the rate could not be made on the gross estimated rental, but only on the rateable value of the premises (*Rose* v. *Watson*, [1894] 2 Q. B. 90).

Decision as to meaning of "annual value" and like phrases.

By the special Act of the Warrington Water Company, which incorporated the Waterworks Clauses Act, 1847, save so far as the clauses or provisions thereof were expressly varied or excepted, the company were obliged to supply water to the occupiers of dwelling-houses for domestic purposes at a rate not exceeding £6 per cent. per annum upon the annual "rack-rent or value" of the premises supplied. It was further provided in a subsequent section of the Act that the rate should be "payable according to the annual value at which the premises were from time to time assessed to the poor rate if the same were so assessed, or, if not, according to the net annual value of the premises":—*Held*, that the water rate chargeable by the company must be calculated on the "rateable value," not on the "gross estimated rental" of the premises supplied with water (*Warrington Waterworks Co.* v. *Longshaw* (1882), 9 Q. B. D. 145). This case was decided in the same divisional court which decided *Dobbs* v. *Grand Junction Waterworks Co.*, *supra*, by the same judges, and on the same day (May 26th, 1882), and in favour of the same principle, viz., rateable value. As before stated, the decision of the Queen's Bench Division in *Dobbs' Case* was sustained by the House of Lords, though it had been reversed by the Court of Appeal.

Supply to public-house.

By the special Act of the West Middlesex Waterworks Company, it was provided that water should be supplied for domestic purposes by the company at a rate per cent. upon the annual value of the dwelling-house or other place supplied, that a supply of water for domestic purposes should not include a supply of water for, among other things, any trade or manufacture or business requiring an extra supply of water, and that the company might furnish water for other than domestic purposes on such terms as might be agreed on between the company and the consumer. The company supplied water for domestic purposes to a house occupied as a licensed public-house. The company contended that the annual value of the premises as a licensed public-house should be taken as the basis of the water rate payable in respect of such supply, and that therefore (1) the fact of the premises being licensed, and (2) the fact that a premium had been paid for the lease of the premises as a public-house, ought to be taken into consideration in fixing the value. The occupier contended that such water rate should be based upon the value of the premises for domestic purposes only. The premises consisted of a dwelling-house in which Coleman carried on the business of an ordinary public-house. There were no rooms for the accommodation of the public, but the whole of the trade done by him consisted in selling spirits, wine and beer across the bar to any person who came and applied for the same. The trade was wholly carried on on the ground floor, and was described as purely a bar trade. Coleman held the ordinary magistrates' licence granted to him under the Licensing Act, 1872, and other Licensing Acts, and the excise licence granted in pursuance thereof. He lived on the premises with his wife and children, and the water was supplied to him for domestic purposes. He paid besides an extra charge of 15*s.* for trade purposes:—*Held*, that the contention of the company was correct (*West Middlesex Waterworks Co.* v. *Coleman*, *Coleman* v. *West Middlesex Waterworks Co.* (1885), 14 Q. B. D. 529). COLERIDGE, C.J., remarked in his judgment: "According to the decision of the House of Lords, the annual value for this purpose means the annual value to the owner after the deduction of certain expenses necessary to maintain the value of the premises. It appears to me that the fact of this house being a licensed house is an element of its value which makes the occupier able and willing to give more rent." SMITH, J., said: "When once the annual value of the premises is ascertained, then no matter how and for what purpose they are occupied, the payment for a supply of water for domestic purposes must be according to such value. It seems to me that 'annual value' means annual value of the house as it stands, and as it is occupied, viz., as a public-house with a licence." The subsequent proceed-

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ings before the police magistrate to fix the annual value in accordance with the foregoing decision will be found reported in the Jl. of G. L., June 2nd, 1885, vol. 45, p. 1006. As to supply to a public-house in Scotland, see *Airdrie, Coatbridge and District Water Trustees* v. *Flanagan* (1906), 43 S. L. R. 422 ; 8 F. 932.

"Annual rent."

In *Smith* v. *Birmingham Corporation* (1883), 11 Q. B. D. 195, the special Act provided that the charge should be on "annual rent." The appellant was the owner of certain houses supplied with water under the Act. The houses were let at weekly rents, the appellant paying all rates charged thereon, and also for all repairs and insurances in respect thereof. He was allowed as an owner, under 32 & 33 Vict. c. 41, s. 4 (the Poor Rate Assessment and Collection Act, 1869), a deduction of 30 per cent. from the full amount of the poor rate which an occupier if rated would have paid. The respondents charged the appellant with water rates calculated on the following basis: They multiplied the weekly rents by fifty-two and deducted, from the amount so arrived at, the actual sums paid by the appellant for rates, and then charged the water rates upon the balance. The appellant contended that this basis was erroneous in three respects, viz.: (1) that the corporation were wrong in taking the actual weekly rents multiplied by fifty-two as the basis without taking into consideration the vacancies that from time to time occurred in the case of weekly tenancies upon the changes of tenants; (2) that the appellant was entitled to have deducted, in estimating the rent, the full amount of the rates which an occupier would have paid, and not merely the amount of the composition paid by him as owner; and (3) that the appellant was entitled to a deduction for repairs, insurances, and other expenses necessary to keep the houses in a state to command the rent. The court (Denman and Hawkins, JJ.), decided, (1) that in order to arrive at the annual rent the "void" or vacancies ought to be taken into account, an allowance being made in respect thereof; (2) that only the actual amount of the composition paid ought to be deducted; and (3) that the appellant was not entitled to deduct the repairs, insurances, and other expenses referred to. As to this last portion of the decision, it should be kept in view that it was based upon the decision of the Court of Appeal in *Dobbs* v. *Grand Junction Waterworks Co.* (1882), 10 Q. B. D. 337, which decision was afterwards reversed by the House of Lords (1883), 9 App. Cas. 49. Much of what the divisional court said as to the meaning of "annual rent" and "annual value" must also be taken as subject to this observation.

"Annual rack-rent."

By the terms of its special Act a water company were to supply water at certain rates on the "annual rack-rent of the house . . . if the same be let at rack-rent, and on the annual value if and while the same is not let at rack-rent." An owner and occupier contended that his house not being let at an annual rack-rent, the water rates payable by him ought to be assessed according to the annual value; and that the annual value was the net annual value as distinguished from the gross value or gross estimated rental:—*Held*, that the words in the section, "annual rack-rent" and "annual value" must be treated as equivalent; that the legislature never intended to lay down two scales of charges, one for tenants of houses and the other for owner occupants; and that an owner occupying his own house must pay water rates upon the gross estimated rental as distinguished from the net annual value (*Stevens* v. *Barnet Gas and Water Co.* (1888), 57 L. J. M. C. 82). See *South Staffordshire Waterworks Co.* v. *Barrow* (1897), 61 J. P. 661, *post*, p. 512.

A joint water board were authorised to charge according to "annual rack-rent or value." A divisional court (Lord Alverstone, L.C.J., and Kennedy and Ridley, JJ.), unanimously held that the two expressions "rack-rent and value," bore the same signification and that the rates of the district were to be deducted (*Wilkinson* v. *Bury and District Joint Water Board* (1905), 69 J. P. 214).

Dispute as to annual value.

A dispute between a company and a consumer having arisen as to the amount of the annual value of the premises supplied, the company brought an action in the county court to recover the rate, under s. 21 of the Waterworks Clauses Act, 1863 (26 & 27 Vict. c. 93), and also

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under a section in their special Act. On a case stated by the county court judge, it was decided that where a *bonâ fide* dispute arises as to the "annual value," the company must, before they can sue for the rate, obtain the decision of justices on that dispute (*New River Co.* v. *Mather* (1875), L. R. 10 C. P. 442). Where after such a dispute had arisen a company, instead of charging a rate of so much in the £, charged a fixed minimum lump sum which was authorised by their special Act, and brought an action to recover the amount, the court held that it was unnecessary to go through the form of fixing the annual value before justices, as such a proceeding would be "altogether nugatory and useless" (*Colne Valley Water Co.* v. *Treharne* (1884), 48 J. P. 279). Where after such a dispute the company proceeded summarily to recover the rate before justices, under s. 74, it was held, on a case stated, that the justices had power on the hearing of the summons to determine the dispute as to the annual value, and that it was not necessary to their jurisdiction, before making an order for payment of the rate upon such summons, that the dispute should have been previously determined in a separate proceeding before justices (*Lea* v. *Abergavenny Improvement Commissioners* (1885), 16 Q. B. D. 18).

The Grand Junction Waterworks Company issued a summons to recover ten quarters' water rate from the owner of five houses in Isleworth. These being beyond the metropolitan area, the company assessed the houses at £18. At the hearing the defendant disputed this rateable value, and the case was adjourned to admit of the disputed question of annual value being settled by justices. The justices assessed the annual value at £18 10*s*. On the case coming on for further consideration, his honour, Judge WOODFALL, allowed the plaintiffs to amend their claim in accordance with the increased assessment. For the defendant it was contended that the action was premature. The learned judge decided against this view, and gave judgment for the plaintiffs with costs, observing that there was no dispute as to the assessment prior to this action (*Grand Junction Waterworks Co.* v. *Blight*, Jl. of G. L., February 24th, 1903).

The statutory remedy provided by s. 68 for settling disputes as to the annual value of a tenement supplied with water, and the special remedy by penalties given by s. 43, against the company for withholding water, do not oust the jurisdiction of the court to restrain the company by injunction from cutting off the supply of water pending proceedings for settling a dispute as to the annual value. But where the owner or occupier declined to undertake to commence proceedings with due speed, before the justices, under s. 68, the court refused a motion for injunction to restrain the defendants cutting off the water (*Hayward* v. *East London Waterworks Co.* (1884), 28 Ch. D. 138).

Where a dispute has arisen as to the amount of the water rate payable by an occupier of premises to a water company (whose special Act incorporated the Waterworks Clauses Act, 1847), the determination of the annual value of the premises supplied, by two justices, under s. 68 of the Act of 1847, is a condition precedent to the right of the occupier to sue the company for cutting off the water, and for the amount alleged to have been paid in excess (*Whiting* v. *East London Waterworks Co.* (1884), 1 C. & E. 331).

Water rate paid under mistake of law or fact.

In *Slater* v. *Burnley* (*Mayor of*) (1888), 59 L. T. 636, it was held, on the construction of a local improvement Act, that though various portions of the Waterworks Clauses Act, 1847, were incorporated, s. 68 was not, and, therefore, that settlement of the annual value by two justices was not a condition precedent to the plaintiff's right to bring an action for overcharge. The defendants, in consequence of a misconstruction of their local Act, charged the plaintiff for water rent on the basis of the gross annual value instead of the net annual value. The plaintiff paid the water rent on that basis in ignorance of the fact that it was a wrong basis. In an action by the plaintiff for a return of the sum of £35, the amount overcharged by the defendants in excess of their powers, it was held that, inasmuch as the payment of the water rent on the basis of the gross annual value was voluntary, no action lay against the defendants for the return of any overcharge. To the same effect, see *Henderson* v. *Folkestone Waterworks Co.* (1885), 1 T. L. R. 329.

The owners, etc., of houses on the Bishop of London's estate at Paddington were entitled, by s. 4 of the Grand Junction Waterworks Act, 1856, to a supply of water at a rate 15 per cent. less than the owners of houses not on that estate. A tenant on the former estate (neither he nor the company being aware that the house was situate within the limits of the estate) paid for some time the full rate demanded:—*Held*, by the divisional court, that the overpayments were made under mistake of fact, and were recoverable (*Meadows* v. *Grand Junction Waterworks Co.* (1905), 69 J. P. 255).

Application of covenants as to "rates" to water rates.

In a lease of a shop and basement, and of three rooms on the third floor of the same house, the lessor covenanted to pay "all rates and taxes chargeable in respect of the demised premises." Water was separately supplied by a water company to the shop and basement, and paid for by the tenant. In an action to recover from the lessor the amount so paid, it was held, that such charge was a "rate" within the meaning of the covenant (*Direct Spanish Telegraph Co., Ltd.* v. *Shepherd* (1884), 13 Q. B. D. 202). By a covenant contained in the lease of a warehouse in the city of London, the lessor covenanted with the lessees to pay all rates, taxes, and impositions whatsoever, whether parliamentary, parochial, or imposed by the corporation of the city of London, or otherwise howsoever, which then were or thereafter might be rated, charged, or assessed on the said premises, or any part thereof, or on the said yearly rent, or on the landlord, owner, or tenants of the said premises in respect thereof. Water having been supplied to the demised premises for domestic purposes by the New River Company, under the provisions of the Waterworks Clauses Act, 1847, the lessees paid the water rates due in respect of such supply, and sought to recover the same from the lessor:—*Held* (distinguishing *Direct Spanish Telegraph Co., Ltd.* v. *Shepherd*, *supra*), that such water rates were not rates or impositions imposed on or in respect of the premises within the meaning of the covenant, and, therefore, the lessees were not entitled to recover the same from the lessor (*Badcock* v. *Hunt* (1888), 22 Q. B. D. 145). The decision in *Direct Spanish Telegraph Co., Ltd.* v. *Shepherd*, *supra*, was again discussed, and was followed with reluctance by BUCKLEY, J., in a case where in a lease of the whole of the basement and a portion of the ground floor of a block of buildings in Holborn, the lessors covenanted to pay "all rates and taxes payable in respect of the said demised premises," and water was supplied for domestic purposes by the water board to the whole block by a common pipe. See *Bourn and Tant* v. *Salmon and Gluckstein, Ltd.* (1906), 70 J. P. 462, affirmed on appeal on the ground of the particular circumstances of the case, and on the ground that the case was indistinguishable from *Direct Spanish Telegraph Co., Ltd.* v. *Shepherd*, *supra*. See [1907] 1 Ch. 616; see these cases discussed in the Law Times, November 27th, 1909.

Water for trade purposes.

Under a covenant in a lease, the lessor agreed to pay "all water rate imposed or assessed upon the premises, or on the lessor or lessees in respect thereof":—*Held*, that the lessor was not bound to pay for water supplied by the water company to the lessees for trade purposes (*In re Floyd, Floyd* v. *J. Lyons & Co.*, [1897] 1 Ch. 633; *Drieselman* v. *Winstanley* (1909), 53 Sol. Jo. 631).

In *Southwark and Vauxhall Waterworks Co.* v. *Dickenson* (1889), 5 T. L. R. 251, it appeared that the defendant having built a block of model lodging-houses the company agreed with him to supply water thereto, by meter, at one shilling per 1,000 gallons. The defendant set up that the agreement was *ultra vires* of the company, and that he was not bound to pay more than the rates fixed by s. 57 of the company's Act of 1852, which related to supply by meter to persons "who require a supply of water by measure for purposes other than the purposes in respect of which rates are by this Act provided." The Court of Appeal decided that this section did not deprive the company of the right to make and enforce the agreement referred to.

In *Elliott* v. *Russell*, [1902] 2 K. B. 748, it was held by the divisional court that a rent for water supplied under agreement made under s. 56 of the Public Health Act, 1875, was a "rate made under this Act" within the meaning of s. 256 of the Public Health Act. In *Northampton Corporation* v. *Ellen*, [1904]

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1 K. B. 299, it was held by the Court of Appeal that a water rate was not a "rate" within the meaning of an Order extending the boundaries of the borough of Northampton, Article 36 whereof provided that the general district rate to be levied in the added part should not in any one year during a period of ten years exceed such an amount in the £ as, "when added to the poor rate and to the borough rate and any other rate made by the corporation" in the same year, would make up a total rate of 5*s.* 6*d.* in the £.

To an action of trespass for breaking and entering the plaintiff's mill and taking his goods, the commissioners of the Glossop reservoir pleaded a justification under their local Act; viz., that the defendants as commissioners under the Act completed one of three reservoirs mentioned therein; that the plaintiff's mill was benefited by the supply of water therefrom; that a certain rate was made, and that the trespass was committed and the goods were taken as a distress for non-payment of the rate. The plaintiff replied that only *one* reservoir had been completed. Section 38 of the Act enacted, that "no rate shall be levied or assessed under the provisions hereinbefore contained *until* the said reservoirs shall be actually made and in use and water supplied therefrom." It was held in the Exchequer Chamber (affirming the judgment of the Court of Exchequer), that, upon the true construction of the Act, the completion of *one* reservoir entitled the commissioners to levy a rate on the class of persons mentioned in the Act actually benefited by it; and therefore that the plea was good (*Sidebottom* v. *Glossop Reservoir Commissioners* (1847), 1 Ex. 611).

Under the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), s. 69, any commissioners of waterworks, trustees of waterworks, water companies, gas companies, and other corporations, bodies and persons having the management of any waterworks, reservoirs, wells, springs, or streams of water, and gasworks respectively, may, in their discretion, grant and furnish supplies of water or gas for lodging-houses provided under this part of this Act, either without charge or on such other favourable terms as they think fit. This is a re-enactment of s. 39 of the Labouring Classes Lodging Houses Act, 1851, repealed by the Act of 1890.

The case of *South Staffordshire Waterworks Co.* v. *Barrow* (1897), 61 J. P. 661, turned upon the construction of certain special sections contained in two Acts empowering the plaintiffs. The question was whether the company were entitled to charge the defendant water rate calculated on "annual rack-rent or value" under a scale prescribed by an Act of 1861, or on "net rateable value" under a scale prescribed by certain other special Acts. The Court of Appeal held that the enactments were ambiguous, and gave the consumer the benefit of the lower rate. Lord ESHER, M.R., said: "In my opinion, the statute is wholly ambiguous with regard to the toll. Now, if that be so, inasmuch as this is a toll to be imposed, and the amount of that toll is left absolutely ambiguous, what is the rule to be applied? It is that where an Act gives power to a company to impose a toll or rate upon the public, and it is left ambiguous which of two tolls they have a right to impose, the court must decide in favour of that which is the least onerous or burdensome to the public. That is the doctrine laid down in the case of *Stourbridge Canal Co.* v. *Wheeley* (1831), 2 B. & Ad. 792, by Lord TENTERDEN, and the Court of King's Bench. It seems, to my mind, an excellently good doctrine, and I entirely adopt it, and apply it in this case. Therefore, the case being ambiguous, the company can only impose on the defendant the lower of the two tolls."

"Water-closet."

For a decision as to whether a particular structure was a water-closet within the meaning of a water company's Act, see *Roberts* v. *South Essex Waterworks Co.*, decided by a divisional court (1903), 67 J. P. 404.

The owner of a row of houses entered into a contract with a water company for a supply of water for domestic purposes to these houses in consideration of a payment of £2 16*s.* per annum or 14*s.* per quarter. After a lapse of four years, during which this contract was observed on both sides, the water company sent out a general notice to all consumers that they were going to alter their scale. There was no evidence that the defendant got this notice, but if he did he did not treat it as a determination of his private contract. The defendant was summoned before the justices for payment of water rates which were being charged generally and which were within the company's statutory powers. It was one of the contentions on behalf of the company that they had no power to make the special contract and so to charge a differential rate. The justices held, and the divisional court afterwards also held, that the special contract had been lawfully made and had not been determined (*Bridport Waterworks Co.* v. *Hounsell*, Jl. of G. L., February 9th, 1904, p. 347).

The Northampton corporation purchased the undertaking of the Northampton Waterworks Company under the provisions of the Northampton Waterworks Act, 1884, which by s. 36 empowered them to charge for the supply of water for domestic use to any dwelling-house a sum not exceeding 7½ per cent. per annum on the net rateable value of such dwelling-house. By the water company's special Act of 1861, it was provided that "the company may from time to time supply any person with water for any purpose for which such supply may be required, for such remuneration, and upon such terms and conditions as shall be agreed upon between the company and the person desirous of having such supply of water, under a special agreement," and that power was, by the Act of 1884, transferred to the plaintiffs. There was no express provision in either of the Acts requiring equality of rating in respect of the supply of water. The corporation charged for the supply of water for domestic purposes at the rate of 7½ per. cent. upon the net rateable value of the dwelling-houses in one part of their district, and at the rate of 5 per cent. in another part:—*Held*, that the corporation were not bound, under s. 36 of the Act of 1884, to charge for water at an equal rate in the £ to all consumers (*Northampton Corporation* v. *Ellen*, [1904] 1 K. B. 299; 68 J. P. 197).

Where several houses supplied by one pipe, each to pay.

69. When several houses or parts of houses in the separate occupation of several persons are supplied by one common pipe, the several owners or occupiers of such houses or parts of houses shall be liable to the payment of the same rates for the supply of water as they would have been liable to if each of such several houses or parts of houses had been supplied with water from the works of the undertakers by a separate pipe.

See clause 13 of the Model Water Bill.

Rates to be paid quarterly.

70. The rates shall be paid in advance by equal quarterly payments, in England or Ireland, at Christmas Day, Lady Day, Midsummer Day, and Michaelmas Day, and in Scotland at Martinmas, Candlemas, Whitsuntide, and Lammas, and the first payment shall be made at the time when the pipe by which the water is supplied is made to communicate with the pipes of the undertakers, or at the time when the agreement to take water from the undertakers is made.

See *Sheffield Waterworks Co.* v. *Brooks*, cited *ante*, p. 490.

Where a house to which water is supplied by a waterworks company is unoccupied at the beginning of a quarter, and becomes occupied in the course of the quarter, the company are only entitled to demand, under the above section, so much of the quarter's rate as is proportional to the period during which the house is occupied, even though whilst the house was so unoccupied the company had no notice of the fact, and consequently continued the supply of water (*East London Waterworks Co.* v. *Foulkes*, [1894] 1 Q. B. 819).

The Act of a metropolitan company incorporated the Waterworks Clauses Act, 1847. The company were summoned for failing to supply the complainant with a proper supply of water. The summons was dismissed on the

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ground that the complainant had not paid the water rate in advance, although it was not the custom of the company to take prepayment (*Kyffin* v. *East London Waterworks Co.*, Jl. of G. L., July 30th, 1895, vol. 66, p. 243). A similar decision was given by Mr. Mead, on the ground that waiver was not pleadable, as the case was a criminal one, *i.e.*, for penalty (*Thorn* v. *East London Waterworks Co.*, Jl. of G. L., July 23rd, 1895, vol. 66, p. 189). See also *Sheffield Waterworks Co.* v. *Brooks*, cited *ante*, p. 490.

In the area of the Metropolitan Water Board the quarterly days for payment of water rates to the Board are now April 1st, July 1st, October 1st and January 1st. See s. 15 of the Metropolitan Water Board (Charges) Act, 1907, *post*, p. 693.

Parties giving notice to discontinue use of water, or removing, to pay to the next quarter day.

71. The occupier of any dwelling-house or part of a dwelling-house liable to the payment of any water rate who shall give notice of his intention to discontinue the use of the water supplied by the undertakers or who shall remove from his dwelling between any two quarterly days of payment, shall pay the water rate in respect of such dwelling-house or part of a dwelling-house for the quarter ending on the quarterly day of payment next after his quitting the same or giving such notice.

Sect. 30 of the Metropolitan Water Board (Charges) Act, 1907, provides as to the area of the board's jurisdiction for a *written* notice of discontinuance, and see clause 14 of the Model Water Bill.

Owners of houses not exceeding £10 rent to be liable to water rates.

72. The owners of all dwelling-houses or parts of dwelling-houses occupied as separate tenements, the annual value of which houses or tenements shall not exceed the sum of ten pounds, shall be liable to the payment of the rates instead of the occupiers thereof; and the powers and provisions herein or in the special Act contained for the recovery of rates from occupiers shall be construed to apply to the owners of such houses and tenements; and the person receiving the rents of any such house or tenement as aforesaid from the occupier thereof, on his own account, or as agent or receiver for any person interested therein, shall be deemed the owner of such house or tenement.

As regards the area of the Metropolitan Water Board, it is, by s. 4 of the Metropolitan Water Board (Charges) Act, 1907, provided as follows:—"In and for the purposes of this Act, s. 72 of the Waterworks Clauses Act, 1847, as incorporated with this Act, shall be read and have effect as if the words 'rateable value' had been inserted therein, instead of the words 'annual value,' and as if the words 'twenty pounds' had been inserted therein instead of the words 'ten pounds.'" Sect. 27 of that Act empowers the Metropolitan Water Board to compound rates with owners.

A water company (the respondents), relying on s. 58 of their private Act (15 & 16 Vict. c. clviii.), which extended the provisions of the above section to houses not exceeding the annual value of £20, claimed water rates from the appellants as owners of certain houses under the annual value of £20 each, for two quarters, during the whole of which time such houses were unoccupied:—*Held*, that, regard being had to the provisions of s. 71, an owner's liability for rates under the above section ceases on the quarterly day of payment next after the house has become unoccupied, and that as s. 58 of the respondent's private Act merely extended the provisions of that section to houses not exceeding the annual value of £20, the respondents were not entitled to recover (*British Empire Mutual Life Assurance Co.* v. *Southwark and Vauxhall Water Co.* (1888), 59 L. T. 321).

NOTE.

A rent collector is an owner within the meaning of the section in the text (*Metropolitan Water Board* v. *Brooks* (1910), 75 J. P. 41).

By the provisions of a water company's special Act, if "any person supplied with water" by the company negligently suffered the water so supplied to him to be wasted, he was liable to a penalty :—*Held*, that where a house was let to a tenant at a rent not exceeding £10, so that the owner was liable under s. 72 of the Waterworks Clauses Act, 1847, to pay the water rates instead of the occupier, the owner was a "person supplied with water" within the meaning of the special Act, and was under a duty to take care that the water supplied was not wasted (*Brock* v. *Harrison*, [1899] 1 Q. B. 958).

See a case relating to the assessment of the owner of small tenements let by the week, the owner paying all outgoings, in which the question raised was whether any deduction for voids, losses of rent, and cost of collection should be made (*Smith* v. *Birmingham Churchwardens* (1889), 22 Q. B. D. 703).

Tenants under existing leases to repay the owner.

73. Provided always, that when any owner shall pay any such rate in respect of any such dwelling-house or part of a dwelling-house which shall be in the occupation of any tenant under any lease or agreement made prior to the passing of the special Act, such tenant shall repay to the owner all sums which shall be so by him paid during the continuance of such lease, unless it have been agreed that the owner shall pay the water rates in respect of such dwelling-house or part of a dwelling-house ; and every such sum of money payable by the tenant to the owner, under the provision herein-before contained, may be recovered, if the same be not paid upon demand, as arrears of rent could be recovered from the occupier by the said owner.

Rates, how to be recovered.

74. If any person supplied with water by the undertakers, or liable as herein or in the special Act provided to pay the water rate, neglect to pay such water rate at any of the said times of payment thereof, the undertakers may stop the water from flowing into the premises in respect of which such rate is payable, by cutting off the pipe to such premises, or by such means as the undertakers shall think fit, and may recover the rate due from such person, if less than twenty pounds, with the expenses of cutting off the water and costs of recovering the rate, in the same manner as any damages for the recovery of which no special provision is made are recoverable by this or the special Act ; or if the rate so due amount to twenty pounds or upwards, the undertakers may recover the same, with the expenses of cutting off the water by action in any court of competent jurisdiction.

As to the machinery provided, see s. 85 and the notes to s. 40 of the Gasworks Clauses Act, 1847, *ante*, p. 214.

The Waterworks Clauses Act, 1863 (26 & 27 Vict. c. 93), further provides (s. 21) :

> "If any person refuses or neglects to pay to the undertakers any rate or sum due to them under the special Act, they may recover the same, with costs, in any court of competent jurisdiction ; and their remedy under the present section shall be in addition to their other remedies for the recovery thereof."

See p. 544.

See also s. 33 of the Metropolitan Water Board (Charges) Act, 1907, *post*, p. 699, as to the recovery of rates by action.

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NOTE.

Sect. 11 of 11 & 12 Vict. c. 43 (which limits the time for making a complaint to six months from the time when the matter of such complaint arose), applies to the hearing of a summons before justices for arrears of water rate under s. 85 of the Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), and s. 140 of the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20) (*East London Waterworks Co.* v. *Charles*, [1894] 2 Q. B. 730).

As to the necessity for a previous demand of the rate, see *East London Waterworks Co.* v. *Kyffin* and *Elliott* v. *Russell*, cited at length, *ante*, p. 216. See also generally as to the six months' limitation the other cases cited at p. 216, *ante*.

In *Elliott* v. *Russell, ante*, p. 216, a local authority supplied water under the powers of the Public Health Act, 1875, which, by s. 57, incorporates *inter alia* the section in the text. Sect. 256 of the Act of 1875 provides that if any person assessed to any rate made under that Act fails to pay, for the space of fourteen days after demand in writing, he may be summoned before a court of summary jurisdiction. A consumer having failed to pay within the fourteen days after demand in writing, the local authority within six calendar months after the expiration of the fourteen days took out a summons under s. 256 to enforce payment. It was held that the water rate was a rate made within the meaning of s. 256, and that the matter of complaint arose when the appellants failed to pay after the fourteen days, and, therefore, that the complaint was made within the time limited by s. 11 of the Summary Jurisdiction Act, 1848.

It has, under the Public Health Act, been decided that the six months' limitation for summary proceedings is also applicable to proceedings taken in the county court (*Tottenham Local Board* v. *Rowell* (1876), 1 Ex. D. 514; following *West Ham Local Board* v. *Maddams* (1876), 1 Ex. D. 516 n.). These cases were distinguished in *Leeds Corporation* v. *Robshaw* (1887), 51 J. P. 441. In that case the Leeds Improvement Act, 1877, s. 96, provided that summary proceedings before justices for the recovery of expenses must be brought within one year. Section 109 provided that when any person neglected to pay any sum due to the corporation, such sum might be recovered in any court of competent jurisdiction for the recovery of debts of the like amount. Other remedies were given for the recovery of these sums, one by an Act of 1842 by way of distress, in which there was no limit of time, and another by an Act of 1866 by action at law. It was held that the limitation of one year did not apply to proceedings by way of action of debt in the county court. But the cases of *Tottenham Local Board* v. *Rowell*, and *West Ham Local Board* v. *Maddams, supra*, were followed in *Hammersmith Vestry* v. *Lowenfeld*, [1896] 2 Q. B. 278; a case decided under the Public Health (London) Act, 1891. These cases, have, however, since been distinguished, and *Hammersmith Vestry* v. *Lowenfeld* doubted in the Court of Appeal in *Blackburn Corporation* v. *Saunderson*, [1902] 1 K. B. 794; a case decided on a local improvement Act.

It is not a condition precedent to the right to recover the rate that the power of cutting off the water should first have been exercised (*R.* v. *Hutton*, [1907] 2 K. B. 578).

As to the jurisdiction of the justices in respect of costs see *Ruabon Water Co.* v. *Evans* (1906), 22 T. L. R. 541. See also *R.* v. *Baker* (1908), 73 J. P. 166.

See the following cases cited *ante*, pp. 490, 491, viz., *Sheffield Waterworks Co.* v. *Wilkinson; Sheffield Waterworks Co.* v. *Brooks; Young* v. *Southwark and Vauxhall Water Co.*

The statutory remedy provided by s. 68 for settling disputes as to the annual value of a tenement supplied with water, and the special remedy by penalties given by s. 43 against the company for withholding water, does not oust the jurisdiction of the court to restrain the company by injunction from cutting off the supply of water pending proceedings for settling a dispute as to the annual value. But where the owner or occupier declined to undertake to commence proceedings with due speed before the justices, under s. 68, the court refused a motion for injunction to restrain the cutting off of the water (*Hayward* v. *East London Waterworks Co.* (1884), 28 Ch. D. 138).

NOTE.

Regulation of Powers Act, 1887.

By the Water Companies (Regulation of Powers) Act, 1887 (50 & 51 Vict c. 21), it is now provided as follows:

> 3. This Act shall apply to every water company which is a trading company supplying water for profit, and to which any of the provisions of the Waterworks Clauses Act, 1847, have been or shall be made applicable by any special Act or provisional order confirmed by Parliament, and every such special Act and provisional order shall be deemed to be amended by this Act, and shall be construed accordingly.

Water not to be cut off where the water rate is payable by the owner.

> 4. Where the owner and not the occupier is liable by law or by agreement with the water company to the payment of the water rate in respect of any dwelling-house or part of a dwelling-house occupied as a separate tenement, no water company shall cut off the water supply for non-payment of the water rate, but such water rate, without prejudice to the other remedies of the company for enforcing payment thereof from such owner, shall, together with the interest thereon, at the rate of five pounds per centum per annum, computed from the expiration of one month from the time when the same has been claimed by the company until receipt thereof by the company, be a charge on such dwelling-house in priority to all other charges affecting the premises; and (without prejudice to such charge) the amount may be recovered, with the costs incurred, from the owner or from the occupier for the time being, in the same manner as water rates may by law be recovered: Provided always, that proceedings shall not be taken against the occupier until notice shall have been given to him or left at his dwelling-house to pay the amount due for water rate out of the rent then due or that may thereafter become due from him, and he shall have omitted so to pay such water rate; and provided also that no greater sum shall be recovered at any one time from any such occupier than the amount of rent owing by him, or which shall have accrued due from him since such notice shall have been given or left as aforesaid, and that every such occupier shall be entitled to deduct from the rent payable by him the sum so recovered from him, or which he shall have paid on demand.

See this section and the notes thereunder at p. 545, *post.*

Penalty on cutting off of supply in contravention of the Act.

> 5. In the event of any such supply being cut off in contravention of this Act, the company cutting off the same shall be liable to a penalty not exceeding five pounds for each day during which the water shall remain cut off, which penalty shall be recoverable summarily from the company by, and shall be paid to, the person aggrieved.

The above Act of 1887 does not apply to Scotland or to Ireland (s. 2).

The effect of s. 4 of the above Act is that a purchaser of the freehold of a dwelling-house is liable to a personal action at the suit of the waterworks company to recover arrears of water rate which accrued due before the date of the purchase (*East London Waterworks Co.* v. *Kellerman*, [1892] 2 Q. B. 72). In a case of *Lambeth Waterworks Co.* v. *Richardson* (unreported, except in the Jl. of G. L., May 20th, 1890, vol. 55, p. 935), it appeared that a sub-lessee of certain houses for an unexpired term of years, made an arrangement with the water company for the payment of the water rates. The defendant becoming entitled to the superior lease, successfully brought an action to recover possession, and took possession accordingly. The company sued the defendant in the county court for the arrears left unpaid by the sub-lessee, and recovered; and on appeal the Queen's Bench Division upheld that decision. See further, p. 545.

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NOTE.

Notice to sanitary authority of water supply being cut off.

By the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), it is provided as follows:

> 49.—(1.) Where a water company may lawfully cut off the water supply to any inhabited dwelling-house, and cease to supply such dwelling-house with water for non-payment of water rate or other cause, the company shall in every case, within twenty-four hours after exercising the said right, give notice thereof in writing to the sanitary authority of the district in which the house is situated.
>
> (2.) Any company which neglects to comply with the foregoing provision shall be liable to a fine not exceeding ten pounds, and it shall be the duty of the sanitary authority to take proceedings against any company in default.
>
> (3.) This section shall apply to every water company which is a trading company supplying water for profit.

By an Act of 46 Geo. 3, c. cxix., s. 57, the West Middlesex Waterworks Company were to supply water to the occupiers of premises in certain parishes, they paying to the company such rates or sums of money for such water as should be mutually agreed upon between them, and, in default of payment, power was given to the company to issue their warrants for the recovery of arrears by distress and sale of the consumer's goods. By a subsequent Act of 50 Geo. 3, c. cxxxii., s. 13, it was provided that the company should not alienate their powers, but only take and demand "such sums as should be reasonable" for the water supplied under the provisions of that Act; and by 15 & 16 Vict. c. clix. (passed in 1852), which recited the earlier Acts of the company, it was provided that, "except as by this Act expressly provided, this Act or anything therein contained shall not repeal, alter, interpret, or in any manner affect any of the provisions in force at the commencement of this Act, of the recited Acts, or any of them; and, except only so far as is requisite for the execution of this Act, all those provisions, and all powers thereby respectively created, conferred, or saved, shall be and continue as valid and effectual as if this Act had not passed": —*Held*, that the effect of s. 13 of 50 Geo. 3, c. cxxxii., was merely to alter the mode of ascertaining the amount of the rate, but not the mode of enforcing payment of arrears; and that the power of distress given to the company by s. 57 of the Act of 46 Geo. 3, was not (either expressly or by implication) taken away by the Act of 50 Geo. 3, or by any of the provisions of the Waterworks Clauses Consolidation Act, 1847; but that such power of distress was expressly preserved to the company by s. 48 of 15 & 16 Vict. c. clix.:—*Held*, also, that the company were not responsible for an assault committed by the broker or his assistant when executing the warrant (*Richards* v. *West Middlesex Waterworks Co.* (1885), 15 Q. B. D. 660).

Profits of the undertakers.

And with respect to the amount of profit to be received by the undertakers when the waterworks are carried on for their benefit, be it enacted as follows:

Profits of the company to be limited.

75. The profits of the undertaking to be divided among the undertakers in any year shall not exceed the prescribed rate, or where no rate is prescribed they shall not exceed the rate of ten pounds in the hundred by the year on the paid-up capital in the undertaking, which in such case shall be deemed the prescribed rate, unless a larger dividend be at any time necessary to make up the deficiency of any previous dividend which shall have fallen short of the said yearly rate.

See notes to s. 30 of the Gasworks Clauses Act, 1847, *ante*, pp. 203 *et seq.*

The New River Company, which was incorporated by a charter of James I., had conferred upon it by that charter an unlimited right to receive payments for water and an unlimited right to distribute profits. The New River Company's Act, 1852, authorised the company to construct certain waterworks, and provided that the Waterworks Clauses Act, 1847, except certain provisions thereof not including s. 75, should be incorporated therewith:—*Held*, that the application of the Waterworks Clauses Act, 1847, was not limited to the works authorised by the special Act of 1852, but extended to the whole undertaking; and that therefore s. 75 of the Act of 1847 restricted the profits to be divided among the undertakers to 10 per cent. per annum; that the undertaking of the New River Company, including its landed property, was all one undertaking, and that its rents formed part of its "profits" within the meaning of s. 75; and that the undertakings of the metropolitan water companies, on their transfer to the new water board, ought to be valued as subject to the obligation to contribute to their respective sinking funds (*Metropolitan Water Board* v. *New River Co.* (1904), 20 T. L. R. 687).

A waterworks company whose special Acts incorporated the Waterworks Clauses Act, 1847, and the Companies Clauses Act, 1863, issued preference stock at 5 per cent. and 4½ per cent. respectively. The company were authorised to issue preference shares or stock, but none of the special Acts prescribed any rate of interest on the same. It was held by the Court of Appeal, on a special case stated by the Court of Arbitration appointed under the Metropolis Water Act, 1902, that the 5 per cent. and the 4½ per cent. were prescribed rates within the meaning of s. 75 of the Act of 1847, and were prescribed by s. 13 of the Act of 1863, and hence that the company were not entitled to claim a sum for the purpose of making up the 5 per cent. and the 4½ per cent. respectively to 10 per cent. (*Chelsea Waterworks Co.* v. *Metropolitan Water Board*, [1904] 2 K. B. 77).

A waterworks company was incorporated by special Act in 1809, and its dividends for many years averaged about 6 per cent. It had no prescribed rate of dividend. In 1864 it was amalgamated with another company by an Act incorporating the Waterworks Clauses Act, 1847. The company, having lately become more prosperous, had paid up all deficiencies in previous years back to 1864, and was now proposing to make payments in respect of dividends prior to that date:—*Held*, that such payment would be *ultra vires;* that until 1864 there was no limit or "prescribed rate," and therefore there could be no deficiency within the meaning of the Act (*Kent Waterworks* v. *Lamplough*, [1904] A. C. 27).

Sect. 16 of the Ashton Gas Act, 1877, provides that the profits of the Ashton Gas Company to be divided among the shareholders in any one year shall not exceed the rate of £10 per cent. per annum (defined in the Act as the standard rate of dividend) on the ordinary share capital or stock of the company authorised by parliament and paid up. Section 17 of the same Act provides that a standard price is to be charged by the company for gas, and that the company may increase or diminish the standard dividend in a certain ratio to be determined by reference to the price charged by them for gas. The company for many years paid dividends exceeding the standard rate of dividend to their shareholders, diminishing the standard price of gas, and increasing proportionally the standard rate of dividend. The company distributed all such dividends to their shareholders free of income-tax:—*Held*, that by paying the maximum rate of dividend free of income tax the company were in effect paying a higher rate of interest than was authorised by ss. 16 and 17 of the Ashton Gas Act (*Ashton Gas Co.* v. *Attorney-General*, [1906] A. C. 10).

For a rare instance of a water Act passed since 1847, which did not incorporate the Act of 1847, and where the undertaker was not subjected to limitation of profits, see Stamford Act, 1877 (40 Vict. c. xxxiv.).

Additional capital.

When new or additional capital is authorised by Parliament, the maximum rate of dividend on such capital is generally fixed at 7 per cent. on the ordinary, and 5 per cent. on the preference shares; and a clause is commonly inserted requiring new shares to be offered by auction or tender. Standing Order 188a. provides that "In every bill by which an existing gas or water company is authorised to raise additional capital, provision shall be made for the offer of such capital by public auction or tender at the best price which can be obtained, unless the committee on the bill shall report

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that such provision ought not to be required, with the reasons on which their opinion is founded." See further in the INTRODUCTION.

NOTE.

Rating of waterworks.

Waterworks, like gasworks, are rated to the poor rate on the theory of their being in the possession of a hypothetical tenant. See *ante*, p. 205.

Rateability of water-mains.

The Corporation of Bath, owning certain springs in the neighbourhood, were authorised to convey the water to the city for the supply of the inhabitants, and to make and maintain reservoirs and works. It was held that, in addition to the springs, the corporation were liable to be rated for the reservoirs made by them in the parish of Lyncomb and Widcomb under the Act as for land occupied by them; which reservoirs, by means of aqueducts and pipes laid underground, partly in the same parish and through the parish of St. James into the parish of St. Peter and St. Paul, in Bath, for the supply of the city, produced to the corporation a clear annual profit of £600. But it was further held, that the corporation were not rateable for the whole of the entire profit in the first-mentioned parish, in which the springs were first collected into the reservoirs; a proportion of such entire profit accrued to them from the underground aqueducts and pipes laid into the soil of the other parishes, in respect of which they were to be considered as the occupiers of land yielding annual profit in those parishes; and therefore a rate upon the entire profits arising out of all the parishes, made on the corporation in the first-mentioned parish, was held bad (*The King* v. *Bath* (*Mayor, etc.*) (1811), 14 East, 609).

By a royal warrant to the Chelsea Waterworks Company, which recited that the company had prayed the liberty to use and enjoy the canal and old pond in St. James's Park as reservoirs for supplying the palace of St. James's and the city of Westminster with water; and also to lay a main or mains through the said park to and from the same for the purposes aforesaid; and directed, that the petition being referred by the Commissioners of the Treasury to the Surveyor-General, he had reported that the undertaking might be convenient to his Majesty in several ways: the King, George I., granted to the company the said canal and old pond to be converted into reservoirs and to be used and enjoyed by the company as such, for the purposes aforesaid, during the pleasure of the Crown; and also granted to them full licence to dig the ground in the said park for laying and for mending pipes and mains to and from the pond and canal. This grant was subject to conditions respecting the line of direction of the pipes, their dimensions, the mode of laying them down, and the renewal of the herbage, and also for supervision and control of the ranger of the park and his assistance in the prosecution of the works. The company under this warrant made the reservoirs and laid pipes, and at times made repairs under the supervision of the Crown surveyor, without whose permission they were restrained from making any alterations or doing repairs. The fish were taken by the deputy-ranger. The use of the canal, etc., was beneficial to the company, but they paid no rent, and were paid for supplying the palace with water. The herbage growing on the surface of the soil in the park, including that under which the pipes passed, was rated in the hands of the ranger:—*Held*, that the company were liable to be rated as to the relief of the poor in respect both of the reservoirs and the pipes, as having the exclusive occupation of a portion of the soil in both cases, though for a limited purpose (*The King* v. *Governor and Company of the Chelsea Waterworks* (1833), 5 B. & Ad. 156; and see *Holywell Union* v. *Halkyn District Mines Drainage Co.*, [1895] A. C. 117).

A company, under an Act of Parliament, erected in the parish of A., in Cambridge, a gasometer and other gas apparatus, and laid down mains and pipes in that and other parishes, and also in extra-parochial land belonging to certain colleges in the university. The company supplied light by means of such pipes, etc., to the several parishes and colleges. It was held that the company were rateable as occupiers of the land in the different parishes by their apparatus, pipes, etc.; and were properly assessed upon the sum which a tenant would pay yearly for the apparatus, pipes, etc., deducting the annual average expense of renovating the same, but not profits of the trade (though profits in trade were not assessed in any of the parishes), and deducting also the annual value of the apparatus and pipes lying in extra-parochial land;

and it was further held that the resulting amount was to be distributed among the assessments of the several parishes in proportion, not to the payments made for lights in the respective parishes, but to the quantity of land occupied by the apparatus, etc., in each parish (*R.* v. *Cambridge Gaslight Co.* (1838), 8 A. & E. 73); but see on the last-mentioned point *R.* v. *Mile End Old Town Overseers* and other cases cited therewith, *post*, p. 523.

A waterworks company were empowered by their Acts to construct works and lay mains and pipes through and under certain highways, roads, etc., and to supply certain parishes with water. The company erected in the parish of Hampton, not being one of those parishes, engine-houses and other works, and laid down a main thence, part of which ran through Hampton, conveying the whole of the water to reservoirs in another parish, from which reservoirs the water was distributed through other mains and pipes to the customers of the company in the several parishes named in their Acts. The company derived no direct profit in Hampton, and had no freehold or leasehold interest in the soil of the highway. It was held that, the company, being in possession of the mains buried in the soil, and therefore *de facto* in beneficial occupation of the part of the soil occupied by the mains, were rateable to the poor rate in respect of them (*R.* v. *West Middlesex Waterworks Co.* (1859), 1 E. & E. 716).

By the Southport Improvement Act, 1871 (34 & 35 Vict. c. cxl.), s. 43, the local board of Birkdale had the exclusive right of laying down gas mains and pipes within the township, and were obliged to keep all present and future gas mains and public lamps in good repair, and were to afford the corporation of Southport (who were the owners and occupiers of gasworks, and were empowered by statute to supply gas in the township of Birkdale) the use of the same for the supply of gas for public and private purposes within the township in consideration of certain payments to be made by the corporation to the local board for every thousand cubic feet of gas supplied to private consumers. The local board had laid mains within the township and had kept them in repair, and had afforded the corporation the use of the same for the supply of gas; the mains were not used for any purpose other than the supply of gas by the corporation. The corporation laid the service pipes from the mains to the premises of private consumers at the cost of the latter, kept the service pipes in repair, and charged and collected all gas rents:—*Held*, that the corporation had only a right to the use of the mains for the sole purpose of the supply of gas, and had no exclusive occupation of the mains so as to render them liable to be rated in respect of them (*Mayor, etc. of Southport* v. *Ormskirk Union Assessment Committee*, [1894] 1 Q. B. 196. *Cf.*, however, *Holywell Union Assessment Committee* v. *Halkyn District Mines Drainage Co.*, [1895] A. C. 117).

The corporation of Liverpool agreed with a local authority to afford them a supply of water under the powers of their original Vyrnwy Act of 1880, constructed a main for this purpose to connect with the works of the local authority and placed the meter for measuring the supply afforded at the point of connection. The corporation kept the entire management and control of the main in question:—*Held*, that the corporation were liable to be rated as occupiers in respect of the main (*Liverpool Corporation* v. *Birkenhead Union* (1905), 70 J. P. 146).

By an Act for lighting a district, rates were to be laid upon every person who should "inhabit, hold, use, occupy, be in possession of, or enjoy any messuages, tenements, court-houses, stables, cellars, vaults, houses, shops, warehouses, or other buildings, tenements, or hereditaments, situate or being in any of the streets, squares, lanes, and other public passages and places" within the district, according to the yearly value; so as all such rates for lighting the district should be laid upon such persons as should inhabit, hold, etc., "any messuages, tenements," etc., "or other buildings, tenements, or hereditaments," situate in such of the streets, etc., within the district as should from time to time be lighted by virtue of the Act:—*Held*, that a water company was not liable to be assessed for their mains and pipes, plugs and apparatus used for the conveyance of water, and part of which ran

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underground through the streets and places (*East London Waterworks Co.* v. *Mile End Old Town (Trustees)* (1851), 17 Q. B. 512. *Cf. New River Co.* v. *St. Pancras* (1880), 45 J. P. 75).

Under a local Act for cleansing, lighting, etc., certain commissioners were authorised to levy rates "upon the tenants and occupiers of all messuages, houses, warehouses, shops, cellars, vaults, stables, coachhouses, brewhouses, and other buildings, gardens or garden ground, and other *tenements* in the township." It was held, that the trunks and pipes, works and other apparatus of a water company for the supply of the town with water did not constitute a tenement within the meaning of the Act; and that, therefore, the company were not liable to be rated in respect of such property (*The King* v. *Manchester and Salford Waterworks Co.* (1823), 1 B. & C. 630. *Cf. New River Co.* v. *St. Pancras, supra*).

A water company were occupants of pipes under the surface of the soil in a parish in which the provisions of the Lighting and Watching Act, 1833 (3 & 4 Will. 4, c. 90), had been adopted. The parish was within the metropolitan district. In a lighting rate imposed under the Metropolis Management Act, the company were rated as coming within the description in s. 165 of occupants of "houses, buildings, and property, other than land" at a rate three times greater than that at which the occupiers of land were rated. It was held, that they were rateable at the lower rate, as occupiers of land (*R.* v. *Southwark and Vauxhall Water Co.* (1856), 6 E. & B. 1008).

As to liability of a water company to paving rates under an old local Act, see *R.* v. *East London Waterworks Co.* (1852), 18 Q. B. 705.

By the Birmingham Improvement Act, 1851 (14 & 15 Vict. c. xciii.), the town council were empowered by s. 128 to make and levy a rate, to be called "the borough improvement rate," upon any person who occupies any house, shop, etc., except as thereinafter excepted according to the full net annual value thereof respectively; and by s. 129 it was provided that "the occupiers of any land covered with water," etc., shall be rated in respect of the same at one-fourth part only of the net annual value:—*Held*, that a reservoir of a water company came within the proviso, but that water pipes did not (*Town Council of Birmingham* v. *Birmingham Water Co.* (1861), 1 B. & S. 84).

A metropolitan parish contained seventeen large districts of building land, for each of which a special Act of Parliament was passed, and the rating clauses for paving, lighting, etc., differed in language. The New River Company had water-pipes under the streets in all the districts. In one local Act the rating clause specified only "houses, shops, warehouses, cellars, vaults, buildings and tenements." Another specified only "grounds, houses, shops, gardens, vaults and other buildings." It was held that the words "tenements" and "grounds" must have the widest meaning, and included all land capable of being let at an annual value, and that the New River Company were rateable in all these local districts as occupiers of land in respect of their water-pipes (*New River Co.* v. *St. Pancras Vestry* (1881), 45 J. P. 75).

As to the rateable value of land conveying water by pipes for the purpose of working lead mines, see *Talargoch Mining Co.* v. *St. Asaph Union* (1868), L. R. 3 Q. B. 478.

Sand used in the filter beds of water companies, though periodically removed, washed, and replaced, is part of the rateable hereditament (*East London Waterworks Co.* v. *St. Leonard's, Shoreditch* (1886), reported in Ryde's Rating Appeals, 1886—1890, at p. 155).

Rating of spring and intake.

In *R.* v. *New River Co.* (1813), 1 M. & S. 503, which related to the rating of a spring at Amwell, the question was whether the profits received by the company elsewhere could be taken into account in rating the spring at Amwell where no profits were received, and it was held that such profits ought to be taken into account.

The New River Company had by statute a valuable right of appropriating water drawn from the river Lea. It was necessary for them to get access to the river in order to appropriate that water in the given quantities, and the point at which they took it was fixed by statute, and was presumably the point best adapted to their needs. The land and structure which they occupied for the purpose of securing and passing the water into their system had an added value by reason of its special fitness for this purpose. Large sums had been exacted by successive Acts of Parliament from the appellant company, presumably in return for the privileges conferred upon them. It was held that no sum paid for a privilege not annexed to the land proposed to be rated was an element in arriving at the rateable value of the channel into which the water was diverted, but that there was an added element of value in this case by reason of the special fitness of the land and structure for a particular profitable purpose (*New River Co.* v. *Hertford Union*, [1902] 2 K. B. 597).

General principles for rating water companies.

Waterworks extend usually into more than one parish and in order to proportion the rateable value among the various parishes a system has been devised of dividing a water undertaking into the directly productive portion thereof, and the indirectly productive portion thereof. The rateable value of the latter portion in any particular parish is usually arrived at by applying a percentage to the capital value of the works in the parish. The rateable value of the former is arrived at by making certain deductions from the gross receipts (including a deduction in respect of the indirectly productive portion), and is then allotted among the various parishes in proportion to the receipts earned in each parish. This system and many points which have arisen in its application have been discussed in the following cases:—

Apportionment among several parishes.

In *R.* v. *Mile End Old Town Overseers* (1847), 10 Q. B. 208, the works of a water company extended into several parishes, and consisted of two portions, one of which, being the service pipes which delivered the water to the consumer, was directly productive of profit, and the other, consisting of reservoirs, buildings, etc., indirectly conduced to such production. In some parishes the company had no works, but service pipes. The rateable value, for the purpose of poor rate, of the entire works was £30,800. The rateable value of the reservoirs, buildings, etc., valued as land and buildings deriving additional value from their capacity of being applied to the objects of a water company, was £6,500. It was held that the rateable value ought to be apportioned among the several parishes in the following manner: The rateable value of the reservoirs, buildings, etc., valued as above, to be first deducted from the total rateable value, and distributed among the parishes in which this portion of the works was situate, according to the extent of such works in each parish; and the residue of the rateable value to be apportioned among the parishes containing the service pipes, in the ratio of the net profits produced in each of those parishes.

Principle of assessment.

A second question was decided in *R.* v. *West Middlesex Waterworks Co.*, *supra*, viz.: that as regarded the *principle* of assessment, the company were to be rated in Hampton in respect of the plant, engine-houses, buildings, wharves, mains, lands and premises as for mere lands and buildings with fixtures and machinery attached, and deriving some additional value from their capacity of being applied to such purposes as that of a water company, such additional value being derived from an increase of demand beyond supply, according to the principle regulating exchangeable value, and not by reference to receipts earned in another parish, beyond assuming that they were sufficient to pay for all outgoings, including profits on capital. WIGHTMAN, J., in the course of his judgment, and speaking with reference to the principle of apportionment, said: "Supposing, then, the apparatus to be apportioned to several tenants according to the parts in several parishes, the tenants of the parts directly earning net profits in a parish would be rated by that parish for all the profits earned therein; this being the parochial principle of apportionment which has been unanimously upheld hitherto in respect of all canals, railways, water companies, gas companies, and bridges. But the tenants of the parts directly earning no profit would not be liable to be rated in respect of any rent in the ordinary sense, which is profit remaining after all deductions have been taken from the receipts. But, as these parts of the apparatus, directly earning nothing, but indirectly conducing to such earnings elsewhere, are assumed to continue in operation, the company, to

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whose interest such continued operation is essential, must be assumed to pay adequate remuneration to a contractor for land and fixed capital vested therein, together with the labour and skill requisite for the effective continuance of such operation; and this contractor with the company would stand in the relation of occupying tenant to the parish, and the part within the parish would be the rateable subject, and the local rateable value would be such sum as would pay the rent of the land and the profit on fixed capital therein. It is said in the *Mile End Case,* 10 Q. B. 210, that the parts indirectly conducing to produce profit are to be rated as mere land, etc., with some additional value from their capacity of being applied to such purposes as those of a water company. The meaning of these words would be exemplified in this case, if it be supposed that the bank of the Thames and the underground of the highways in Hampton were heretofore of no rateable value; but that, when a wharf on the bank was required to raise water from the Thames, and when the underground of the highways was required for the laying mains giving transit to such water, the owners of the soil of the bank and of the highway could get some payment for allowing the use of their soil. Thus land which before produced nothing would produce something, and so have some rateable value; which would be an addition arising solely from its capacity for being used for a water company. Value is derived entirely from the relation of demand to supply; and if a water company comes into competition with a mere agriculturist for land for waterworks, an addition is made to the value of such land by the additional competition" (1 E. & E. at pp. 723, 724).

The property of a gas company lay in five townships, of which the respondent township was one, and consisted of lands and buildings, with retorts and furnaces, and pipes attached thereto, used for the making of gas; of buildings used as storehouses and offices, and of land occupied by mains and pipes. The property in the respondent township consisted of the lands and buildings and apparatus for making the gas, and of part of the mains and pipes, which passed through the respondent township into the other townships:—*Held,* that the rateable value of the whole of the property of the company might be ascertained as follows: By taking from the latest published accounts of the company the sum of the annual gross receipts for sale of gas, and of the residuary products from the materials after the gas had been made, and for the hire of gas meters and fittings, and work done; from this amount, by deducting the gross expenditure, the net receipts might be obtained, and a proper sum would then have to be deducted for tenants' profits and for interest on capital, rates and taxes, the cost of renewal, repairs and insurance of buildings and plant, and renewal of the mains. *Held,* also, in accordance with *R.* v. *Mile End Old Town Overseers,* and *R.* v. *West Middlesex Waterworks Co.,* that the stations, works, buildings, etc., ought to be valued as fixed property, deriving some additional value from their being used as part of the gasworks. *Held,* also, that the rateable value of the mains and pipes, which would be the residue, after deducting the net rateable value of the stations, works, buildings, and lands within the respondent's township from the value of the whole rateable property of the company, must be apportioned among the different townships, not simply according to the extent of the mains contained in each, but keeping in view also the fact that part of them contributed directly and part only indirectly, to the profits, as had been held in *R.* v. *West Middlesex Waterworks Co.* (*R.* v. *Sheffield United Gaslight Co.* (1863), 32 L. J. M. C. 169; *S. C. sub nom. Sheffield United Gaslight Co.* v. *Sheffield Overseers,* 4 B. & S. 135). The decisions in *R.* v. *Mile End Old Town Overseers* and *R.* v. *West Middlesex Waterworks Co.* had previously to the last-mentioned decision been reviewed and confirmed in *Chelsea Waterworks Co.* v. *Putney* (1860), 29 L. J. M. C. 236. See also the later case of *R.* v. *Inhabitants of Lee* (1866), L. R. 1 Q. B. 241; and other cases cited *ante,* pp. 205 *et seq.*

The Metropolitan Water Board are the owners and occupiers of certain property within their limits of supply, consisting of pipes, mains and service-pipes used for the transmission of water. Certain of the pipes and mains are only indirectly productive of profit. The rest of the pipes and mains, together with the service-pipes, are directly productive of profit.

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On an appeal by the board to quarter sessions against the valuation fixed by the City of London Union Assessment Committee in respect of property owned and occupied by the board in 101 parishes in the City of London Union, it was proved that the average price obtained for water throughout the area supplied by the board was about 8*d.* per 1,000 gallons, and the respondents' witnesses estimated the average price obtained by the Board for water supplied in the City of London Union to be 18·98*d.* per 1,000 gallons, and for the purpose of estimating the rateable value of the said hereditaments in the said 101 parishes, the respondents' witnesses assumed the board's working expenses per 1,000 gallons supplied to be the same in the City of London Union as in the rest of the area of supply, namely, 2·14*d.* per 1,000 gallons, and acting upon this assumption the respondents' witnesses estimated the board's net profits per 1,000 gallons as much greater in the City of London Union than in the rest of the area of supply. It was proved to the satisfaction of quarter sessions that it was impossible to ascertain what were the board's expenses in any particular parish or union of parishes apart from the whole. Quarter sessions arrived at the rateable value of the board's property in the 101 parishes by the following method: They held that the undertaking of the board must be valued as a whole, and found the total gross receipts to amount to £2,761,974. From that sum they made deductions in respect of working expenses, tenant's share and other matters; the result of this calculation was the sum of £783,888, which the court found to represent the rateable value, *plus* rates, of the directly productive portion of the whole undertaking. The court stated the sum of £783,888 to be 29·57 per cent. of the total water receipts. They next applied this percentage to the total water receipts in the 101 parishes, and thus ascertained the rateable value, *plus* rates, of the directly productive portion of the board's undertaking in the 101 parishes; they added to the sum so calculated the rateable value of the indirectly productive portion of the board's undertaking in the said 101 parishes. The court stated in their judgment that the respondents had not put before them any other practicable method of valuation, and that on the evidence it was impossible to ascertain what were the expenses in any particular parish or union of parishes apart from the whole, except by hypothetical calculations based on no accurate facts:—*Held*, that to take the net receipts as the basis of valuation might be a better test, where practicable, than to take the gross receipts, but that as that principle was not capable of application in the present case, it could not be said that to take the gross receipts was wrong as a matter of law, and therefore the decision of quarter sessions could not be interfered with (*Metropolitan Water Board* v. *City of London Union Assessment Committee* (1909), 73 J. P. 142).

See further as to the method to be employed in valuing productive and unproductive mains respectively, the *Kent Waterworks Case* (1871), reported in Ryde's Metropolitan Rating Appeals, 3rd ed., at p. 69; and *Gaslight and Coke Co.* v. *City of London and other Unions* (1892), reported in Ryde's Rating Appeals, 1891—1893, at pp. 204 *et seq.*

A waterworks company had works extending over many parishes. All the works were in use for the supply of their customers, but they were in excess of the existing requirements of the company, and were created for and adapted to an increased supply in future years. In the calculation by which the rateable value of the mains and service pipes in one of the parishes supplied was to be arrived at, it was held that the whole of the works being used for the purpose of distributing water as a source of profit, the whole of the capital expenditure must be taken into account, and not merely so much as would have sufficed to provide the existing supply. It was further held that the deduction to be made in respect of the rates which the hypothetical tenant would have to pay, is the amount of the rates that would be payable on the sum at which the works ought to be assessed and not necessarily the rates based on the existing valuation list (*R.* v. *South Staffordshire Waterworks Co.* (1885), 16 Q. B. D. 359).

The corporation of Liverpool were empowered by the Liverpool Corporation Act, 1880 (43 & 44 Vict. c. cxliii.), to construct a reservoir and other works in a parish in the Llanfyllin Union in Wales, for the purposes of the

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supply of water to Liverpool. The construction of the reservoir and works involved the submersion of the sites of the parish church, vicarage and schools, and the stopping up and diversion of certain roads. The Act required the corporation to provide a new church, vicarage and schools on other sites in lieu of those submerged, and to make new roads and bridges, which were rendered necessary by the aforesaid diversion. The corporation carried out the works in conformity with the Act. The justices decided that in estimating the capital value of the works for the purpose of arriving at the rent which an hypothetical tenant must be assumed to be willing to give for them, the amounts expended by the corporation in providing the new church, vicarage and schools, and in making the new roads and bridges must be included as part of the capital cost of the works. The Court of Appeal, reversing the decision of the Divisional Court, upheld the decision of the justices (*Liverpool Corporation* v. *Llanfyllin Union Assessment Committee*, [1899] 2 Q. B. 14. *Cf. Bradford Corporation* v. *Keighley Union* (1906), Konstam's Rating Appeals, 1904—8, p. 517).

The appellants, a water board incorporated by a special Act (39 & 40 Vict. c. clxxxv.), were empowered by the Act to levy a public water rate, but it was provided that they should not levy any higher rate than might be required to discharge so much of the expenses of maintaining the waterworks, etc., as the amount of water rents and other payments for a supply of water should not be sufficient to discharge :—*Held*, that, in assessing the appellants to the poor rate in respect of their reservoirs, pipes, and works, the amount collected by means of a water rate ought to be taken into account (*Dewsbury Waterworks Board* v. *Assessment Committee of Penistone Union* (1886), 17 Q. B. D. 384).

See as to the deductions allowable in respect of the expense of renewing or reproducing the works, *R.* v. *Cambridge Gaslight Co.* (1838), 8 A. & E. 73, at p. 86 ; *R.* v. *London, Brighton and South Coast Rail. Co.* (1851), 15 Q. B. 313, at pp. 364—366 ; *R.* v. *Wells* (1867), L. R. 2 Q. B. 542, at p. 548 ; and *Dewsbury Waterworks Board* v. *Assessment Committee of Penistone Union* (1885), 16 Q. B. D. 585, at p. 596.

The Shaws Water Company were empowered to make reservoirs and to let sites for mills on the banks of the waterfalls at rents payable to the company by the mill-owners in respect of the water power of which they had the use. In rating the company as occupiers, these water rents were included as part of the annual rateable value of their waterworks ; but the company contended that the mill-owners alone ought to be rated as the occupiers. The House of Lords decided that the rate was right, for these water rents were part of the yearly value of the waterworks occupied by the company (*Shaws Water Co.* v. *Greenock Police Trustees* (1863), 4 Macq. H. L. Cas. 593).

"Land covered with water."

By the Sewage Utilization Act, 1867 (30 & 31 Vict. c. 113), s. 17, it was provided that the occupier of any land covered with water . . . should pay to the sewer rate in respect of his property one-fourth part only of the rate in the pound payable in respect of houses and other property. A waterworks company were possessed of a canal, of filter beds supported on brick arches, and sometimes covered with water, at other times not, and of land used for keeping sand for the filter beds ; and they also occupied land by iron pipes, mains, and service pipes :—*Held*, that the canal and filter beds were land covered with water within the meaning of s. 17, and ought to be assessed at one-fourth of the amount to be imposed on houses ; but that the land used for the purpose of keeping sand, and the land occupied by iron pipes, mains, and service pipes did not come within that description, and ought to be assessed at the full value (*East London Waterworks Co.* v. *Leyton Sewage Authority* (1871), L. R. 6 Q. B. 669).

An artificial reservoir is "land covered with water" for the purpose of assessment in the proportion of one-fourth part only of its annual value under the Public Health Act, 1875, s. 211 (1) (b) (*Hampton U. D. C.* v. *Southwark and Vauxhall Water Co.*, [1900] A. C. 3). Further, as to the assessment of land covered with water under the Public Health Act, 1875, s. 211, see *London and India Docks Co.* v. *Woolwich Borough Council*, [1902] 1 K. B. 750.

As to the rateability of land kept vacant as a gathering ground, see *Liverpool Corporation* v. *Chorley Union* (1911), 130 L. T. Jo. 341.

Watershed kept vacant.

Quinquennial valuation list.

Where under the Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 43, the mains and pipes of a waterworks company have been inserted in the quinquennial valuation list, a supplemental valuation list, under ss. 46, 47, may be made during such period of five years, so as to include an increase in the value of the same mains by reason of their having been connected with newly built houses since the date of the last valuation (*R.* v. *New River Co.* (1879), 4 Q. B. D. 309).

Notice of appeal.

The effect of s. 19 of the Union Assessment Committees Act, 1862 (25 & 26 Vict. c. 103), is that upon the hearing by an assessment committee of an objection to a valuation list the scope of the inquiry is, in the absence of the consent of the parties supporting the valuation list, limited to the grounds of objection specified in the notice of objection. Where, therefore, a notice of objection purported to apply only to rateable value, it was held that in the absence of the consent of the overseers, the assessment committee had no jurisdiction to entertain any objection to the gross value (*R.* v. *London JJ.*, [1897] 1 Q. B. 433).

Waterworks in the hands of local authorities.

By a local Act commissioners were empowered to erect waterworks for the purpose of supplying water for watering the streets, for use in case of fire, and other public purposes, in Liverpool, and to levy a rate on the borough for the expenses thereof. The Act contained express prohibitions against using this water for domestic purposes. The commissioners erected waterworks in the adjoining township of West Derby. By subsequent Acts the property and powers of these commissioners became vested in the municipal corporation of Liverpool. Water was supplied in Liverpool for domestic purposes by trading companies from waterworks also situated in the township of West Derby. The corporation was, by a local Act, empowered to purchase the undertakings of these companies, and for that purpose to borrow money. When purchased the corporation was to supply water for domestic purposes to the inhabitants of Liverpool, which then comprised the parish of Liverpool and part of the township of West Derby, and parts of other townships, with power to supply the inhabitants of an adjoining district including the whole township of West Derby. It was enacted that the corporation was so to regulate the charges for the water so supplied as to raise no more money than the interest of the money borrowed and the expenses of managing the waterworks. The purchase was completed, and those waterworks were vested in the corporation. By a subsequent Act the corporation was empowered to use the water from the commissioners' waterworks and the company's waterworks indiscriminately, and the pipes were accordingly united, and the two sets of waterworks were occupied in common:—*Held*, that the corporation were rateable in the township of West Derby for the waterworks there occupied by them under these enactments (*Liverpool Corporation* v. *West Derby Overseers* (1856), 6 E. & B. 704).

So in *R.* v. *Overseers of Longwood* (1849), 13 Q. B. 116, the commissioners of the Huddersfield waterworks, though their occupation was of no benefit to themselves, but was of benefit to the inhabitants of the town only, were held liable to be rated. So likewise in the case of *R.* v. *Manchester Corporation* (1852), 21 L. J. M. C. 160, the corporation of Manchester were held rateable in respect of their waterworks.

By a local Act, reciting that it was expedient to form reservoirs on the river Kent, for the purpose of affording a more regular supply of water to the mills on its banks, and by means thereof cleansing the stream and improving the health of those residents on its banks, the occupants of mills on the river Kent were made commissioners for making reservoirs; and the said commissioners were authorised to make and maintain reservoirs, and to levy a water rate on all mills using the water, for the purposes of defraying the expenses of the Act and maintaining the reservoirs. The commissioners made a reservoir occupying forty-eight acres, entirely situate in the township of K. The mills benefited were situate in eight other townships. The overseers of K. rated the commissioners as occupants of land. On appeal, the

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sessions stated the above facts in a case, in which they found, as a fact, that, if the works occupied by the commissioners had been a private undertaking, belonging to persons who had increased the available supply of water by means of the reservoir as the commissioners had done, and who could allow or refuse the mill-owners the benefit of such increased supply, and charge them for it, the assessed value would be a fair one :—*Held*, that the commissioners had a beneficial occupation, and were rateable, and that, on the above finding, the quantum of the assessment was right (*R.* v. *Inhabitants of Kentmere* (1851), 17 Q. B. 551).

Where waterworks are in the hands of municipal corporations or local authorities, " the whole question turns on the rule given by the Parochial Assessment Act, which says, the occupier is rateable at what a tenant from year to year will give as the rent, who takes the land subject to the same restrictions as the appellants (*i.e.*, a municipal corporation). Now the tenant would only give such a rent as the restrictions imposed by statute would enable him to earn; and the rateable value is to be based upon that rent" : *per* BLACKBURN, J., in *Liverpool Corporation* v. *Overseers of Wavertree* (1875), 2 Ex. D. 55 n.

In estimating the rateable value of waterworks carried on by a municipal corporation for the benefit of the inhabitants of the borough, any restrictions imposed by the statute affecting the profits in the hands of such public body exercising their powers properly for the benefit of the inhabitants of the borough, and *bonâ fide* making their rates so as to leave a small margin of profit, are to be regarded, though the statute does not expressly limit the power of rating to the water rate to the sum charged; and it is the profitable occupation, as it actually is, and not the amount which such a body as a trading company, carrying on their business solely for the purpose of profit without restriction, might realise, which is to be taken as the rateable value. The Public Health Act, 1848, was applied to the city of Worcester, and the corporation of Worcester became the local board of the city, and for the purposes of supplying the sanitary requirements of the city took land, and erected waterworks thereon, in a portion of the parish of Claines, which was within the municipal boundary of the city. The parish of Claines forms part of the Droitwich Poor Law Union, and its area is partly without and partly within the city of Worcester, but for poor law purposes is distinct and separate from the city. The city was supplied with water from these works, and the corporation fixed a rate of 4*d.* in the pound per annum on the net annual value of the dwelling-houses supplied with water for domestic purposes, and made an additional charge for water used for trade and other special purposes, and a certain rate for water supplied by meter. These prices were fixed with a view to the sanitary improvement of the city, and not as a commercial transaction, and, in fact, left but little profit above the actual cost of supply. In the case of small tenements, the charge was still further reduced. The sums charged for domestic purposes would, where the rent of the house was £20 or less, be less than 2*d.* per week, to which limit they were permitted to rate by 11 & 12 Vict. c. 63, s. 76. In the other cases, the statute did not limit the rate to any particular sum :—*Held*, that the rateable value of the waterworks was to be assessed on the profitable occupation, as it was in fact, and not on what it might be in the hands of a trading company without restrictions (*Worcester Corporation* v. *Droitwich Assessment Committee* (1876), 2 Ex. D. 49). Hence, where a sanitary authority were precluded from making any profits out of the waterworks the rateable value of the lands and works was held to be nothing (*Peterborough Corporation* v. *Stamford Union* (1883), 31 W. R. 949). So where a dock company were prohibited by statute from charging tolls for the use of certain railway and tramway lines in connection with a dock (*Sculcoates Union* v. *Hull Dock Co.*, [1895] A. C. 136). See, however, *London C. C.* v. *Erith, etc.*, [1893] A. C. 562, *infra.*

The works on a sewage farm (*e.g.*, a rising main, storage tanks, and effluent culverts) which is the subject of beneficial occupation, are rateable (*Leicester Corporation* v. *Beaumont Leys Churchwardens* (1894), 63 L. J. M. C. 176).

In assessing to the poor rate schools occupied by an education authority, which can make no profit in a commercial sense as tenant of the schools, the education authority itself ought to be considered as a possible tenant, and the gross and rateable values calculated by the rent which the authority might reasonably be expected to pay for the premises for use as schools (*R.* v. *London School Board* (1886), 17 Q. B. D. 738). So, where the corporation of Burton-on-Trent purchased land for a sewage farm, and erected a pumping station with all necessary engines and machinery to pump the sewage on to the farm, and it appeared that it was found to be impossible to work the farm except at a loss as long as it remained a sewage farm, and that if the corporation desired to let it as a sewage farm they would be unable to find any one to take it, even at a nominal rent, and that the pumping station, while used as part of the sewage system, was incapable of yielding a profit, but that if the sewage farm and pumping station belonged to a private owner the corporation would hire them at a yearly rent sufficiently high to support the rate; it was held, on the authority of *R.* v. *School Board for London*, that in making the assessment the corporation ought to considered as possible tenants, and that therefore the assessment was right (*Burton-on-Trent Corporation* v. *Churchwardens, etc. of Eggington* (1889), 24 Q. B. D. 197). See the *London C. C. Case, infra*, and *cf. Durham C. C.* v. *Chester-le-Street Assessment Committee*, [1891] 1 Q. B. 330.

London County Council v. *Erith and other local authorities.*

The London County Council were owners of land and premises consisting of a pumping station and works, which they occupied and used as a necessary part of the metropolitan sewage system, and to enable them to perform statutory duties. So long as the land and premises were used as part of the sewage system they were incapable of yielding a profit, and the London County Council were practically the only possible tenants. If the land and premises had been in the possession, not of the London County Council, but of a private owner to be let, the London County Council would have been willing to pay a yearly rent for the same as part of the metropolitan sewage system sufficient to support the rateable value at which they were assessed to the poor rate; but except for the purposes of the sewage system, and if the land and premises were disconnected therefrom and, in the hands of a tenant, applied to any other purpose for which they might be available, the rateable value would be lower. Under similar conditions the London County Council were also owners of outfall sewers used for the discharge of the sewage into the Thames, and constructed, not underground, but in an embankment erected upon land purchased for that purpose and previously rateable:—*Held*, that the true test of beneficial occupation was not whether a profit could be made, but whether the occupation was of value: that even supposing the London County Council could not under the statutes legally be tenants, they ought to be taken into account as possible hypothetical tenants for the purpose of determining the rateable value of the premises which they owned and occupied; that the pumping station and works and the outfall sewers were rateable to the poor rate, and that the London County Council were assessed on the true principle (*London C. C.* v. *Churchwardens, etc. of Erith and Others*, [1893] A. C. 562). The older cases, bearing on the subject of land interests vested in public bodies for public purposes, must now be read by the light of this important and far-reaching decision. In it the House of Lords approved the decisions in *R.* v. *London School Board* and *Burton-on-Trent Corporation* v. *Egginton, supra*, and disapproved the decision in *Owens College* v. *Chorlton-upon-Medlock Overseers* (1887), 18 Q. B. D. 403. Of *Mersey Docks and Harbour Board* v. *Llaneilian* (1884), 14 Q. B. D. 770 (relating to a tower used as a lighthouse and telegraph station for vessels entering the port of Liverpool), Lord HERSCHELL, L.C., said: "I cannot agree with the view there adopted that because no pecuniary profit could be derived from the conservancy dues to which the board were entitled in respect of their lighthouse, its occupation was not a beneficial occupation and had no pecuniary value, or that it was, in any sense which could exempt it from rateability, 'struck with sterility.'" As to *R.* v. *Metropolitan B. of W.* (1868), L. R. 4 Q. B. 15 (in which it had been held that the sewers were not rateable to the poor rate, on the ground that they were not the subject of a beneficial occupation), Lord HERSCHELL, L.C., said: "I cannot regard as altogether satisfactory, in view of the fuller consideration which has since been given to the matter, the grounds upon which the Court of

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Queen's Bench rested the non-rateability of these sewers; the judgment seems to assume that there can only be a beneficial occupation where it is such as to yield a profit to the public body occupying the premises. I have already said that, in my opinion, the true test is whether the occupation is of value, and not whether it is one by which pecuniary profit can be made. But it would undoubtedly be a serious matter that a hereditament which has for so long a period been deemed free from rateability should now, for the first time, be subjected to it." Of *R.* v. *West Middlesex Waterworks Co.*, *ante*, p. 521, Lord HERSCHELL, L.C., said: "I cannot pretend that the law of rating is at present in a satisfactory condition, or that by the application of well-settled principles the rateability of public bodies in respect of property such as that with which your lordships are dealing can be rested upon a sound and consistent basis. In the case *of Sheffield United Gaslight Co.* v. *Overseers of Sheffield* (1863), 4 B. & S. 135, BLACKBURN, J., after quoting the observation of WIGHTMAN, J., in the case of *R.* v. *West Middlesex Waterworks Co.*, that there appeared so much difficulty in satisfactorily applying the parochial principle of rating by estimating the rent which a tenant would give for the subject-matter in such a case as that before him, as practically to amount nearly, if not entirely, to an impossibility of doing so satisfactorily; and after stating that the whole subject-matter appeared to be involved in so much difficulty and uncertainty that the court had taken much time in considering whether they could not place the rules as to the rating of these companies on more intelligible and satisfactory principles capable of uniform application, added: 'We have not, however, succeeded in laying down a rule which would be consistent with the existing legislation and decisions on the subject, and would at the same time be capable of being satisfactorily worked; and we are strongly impressed with the importance of not unsettling the law as established by past decisions where we cannot lay down a rule which is not open to exception. On the whole, therefore, we feel that our only course, until the legislature shall think fit to interfere, is to adhere to the case of *R.* v. *West Middlesex Waterworks Co.*' My lords, I entirely concur with the learned judge in deeming it inexpedient to interfere in such a matter as this with a long course of practice supported by decisions which are not of very recent date. Therefore, even if it be not possible to rest upon grounds altogether satisfactory the exemption of these sewers, yet the case being, as I have said, a very particular one, I could not advise your lordships to depart from a practice which has prevailed for a very long period, and which has been sanctioned by judicial authority."

By the Merthyr Tydfil Water Act, 1858 (21 & 22 Vict. c. xii.), a local board of health was authorised to acquire waterworks, and by s. 63 all sums paid out of the general district rate under the Act were to be repaid out of any balance standing to the credit of the waterworks' account, after application to the objects to which moneys carried to that account were, under the provisions of the Act, to be primarily applied, and by s. 71 all moneys received under the Act (other than money out of the district rate, or raised on mortgage), were to be applied, *inter alia*, in repaying any moneys advanced out of the general district rate under the powers and for the purposes of the Act. In assessing the local board to the poor rate in respect of the waterworks, a sum paid out of the general district rate for the purposes of the Act was included in the rateable value of the waterworks. It was held, that the sum ought not to be included in the assessment, for it was received on terms as to repayment which prevented it from being available as an item of gross profit (*Merthyr Tydfil L. B.* v. *Merthyr Tydfil Union Assessment Committee*, [1891] 1 Q. B. 186).

Where by s. 163 of New South Wales Municipalities Act of 1867, "land the property of her Majesty and unoccupied or used or reserved, or vested in trustees for purblic puposes," was exempted from rateability; it was held, that on its true construction lands not the property of her Majesty, but occupied by a municipality for the purpose of water supply, were within the exemption (*Council of the Borough of Randwick* v. *Australian Cities Investment Corporation*, [1893] A. C. 322).

Note.

Rating of gas and water pipes and works in Scotland.

As to the rating in Scotland of underground water pipes or gas pipes, or underground works of any water or gas company, see Burgh Police (Scotland) Act, 1892 (55 & 56 Vict. c. 55), s. 347, and the Valuation of Lands (Scotland) Amendment Act, 1887 (50 & 51 Vict. c. 51), s. 2, amended by the Valuation of Lands (Scotland) Acts Amendment Act, 1894 (57 & 58 Vict. c. 36), s. 4. Under the Poor Law (Scotland) Act, 1845 (8 & 9 Vict. c. 83), a waterworks company are liable in assessment for relief of the poor as owners and occupiers of the land through which their pipes run (*Edinburgh Water Co.* v. *Hay* (1854), 1 Macq. H. L. Cas. 682). A conduit of the Glasgow Waterworks Commissioners was carried underground through lands in a parish in virtue of grants of wayleave in perpetuity obtained from the proprietors of the land; it was held by the House of Lords, affirming the decision of the Court of Session, that the commissioners were liable under the Scottish Act, 1663 (c. 21 or c. 31), to assessment in respect of their conduit as "heritors of the parish for the repair of the manse" (*Corporation of Glasgow* v. *McEwan*, [1900] A. C. 91). *Cf. Metropolitan Rail. Co.* v. *Fowler*, [1893] A. C. 416. A district committee, who were erecting waterworks under statutory authority, had completed several miles of the main pipes of their system, and were supplying water to several hundred houses through connections with their pipes. The water so supplied was not taken from the reservoir authorised by the statute, the reservoir not being finished, but from a temporary source during the pleasure of a riparian proprietor. The district committee made a charge for the water so supplied, and they also levied a public water rate:—*Held*, that the unfinished waterworks were not liable to be entered in the valuation roll, in respect that the charge made for the water supplied was not shown to exceed the cost of the necessary connections, and that the public water rate was a contribution towards the cost of construction (*Avondale Parish Council* v. *Lanarkshire District Committee* (1898), Ct. of Sess. Cas., 25 Rettie, 595).

Income tax, etc.

As to the liability to income tax of waterworks in the hands of municipal corporations, and like public bodies, see the *Glasgow Corporation Water Commissioners* v. *Solicitor of Inland Revenue*, and other cases cited *ante*, pp. 204 *et seq.*

Land tax.

A waterworks company is not liable to be assessed to the land tax for the land occupied by their pipes (*Chelsea Waterworks Co.* v. *Bowley* (1851), 17 Q. B. 358).

If profits exceed the amount limited, excess to be invested and form a reserved fund.

76. If the clear profits of the undertaking in any year amount to a larger sum than is sufficient, after making up the deficiency in the dividends of any previous year as aforesaid, to make a dividend at the prescribed rate, the excess beyond the sum necessary for such purpose shall from time to time be invested in government or other securities and the dividends and interest arising from such securities shall also be invested in the same or like securities, in order that the same may accumulate at compound interest until the fund so formed amounts to the prescribed sum, or if no sum be prescribed to a sum equal to one-tenth part of the nominal capital of the undertakers, which sum shall form a reserved fund to answer any deficiency which may at any time happen in the amount of divisible profits, or to meet any extraordinary claim or demand which may at any time arise against the undertakers; and if such fund be at any time reduced, it may thereafter be again restored to the said sum, and so from time to time as often as such reduction shall happen.

See *Mason* v. *Ashton Gas Co.* and other cases cited under s. 35 of the Gasworks Clauses Act, 1847, *ante*, p. 211.

Reserved fund not to be

77. Provided always, that no sum of money shall be taken from the said fund for the purpose of meeting any extraordinary claim, unless it

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resorted to unless to meet extraordinary claim.

be first certified in England or Ireland by two justices, and in Scotland by the sheriff, that the sum so proposed to be taken is required for the purpose of meeting an extraordinary claim within the meaning of this or the special Act.

See ss. 31 and 32 of the Gasworks Clauses Act, 1847, and notes thereto, *ante*, p. 210.

When fund amounts to prescribed sum, interest to be applied to undertaking.

78. When such fund shall, by accumulation or otherwise, amount to the prescribed sum, or one-tenth part of the nominal capital, as the case may be, the interest and dividends thereon shall no longer be invested, but shall be applied to any of the general purposes of the undertaking to which the profits thereof are applicable.

If profits are less than the prescribed rate a sum may be taken from reserved fund to supply deficiency.

79. If in any year the profits of the undertaking divisible amongst the undertakers shall not amount to the prescribed rate, such a sum may be taken from the reserved fund as, with the actual divisible profits of such year, will enable the undertakers to make a dividend of the amount aforesaid, and so from time to time as often as the occasion shall require.

If profits are more than the amount prescribed, a rateable reduction to be made in the price of water.

80. In England or Ireland the court of quarter sessions, and in Scotland the sheriff of such county, may, on the petition of any two water-rate payers within the limits of the special Act, appoint some accountant or other competent person, not being a proprietor of any waterworks, to examine and ascertain, at the expense of the undertakers, the actual state and condition of the concerns of the undertakers, and make report thereof to the said court at the then present or some following sessions, or to the sheriff (the amount of such expense to be determined by the said court or sheriff), and the said court or sheriff may examine any witnesses upon oath touching the truth of the said accounts, and the matters therein referred to ; and if it thereupon appear to the said court or sheriff that the profits of the undertakers for the preceding year have exceeded the prescribed rate, the undertakers shall, in case the whole of the said reserved fund has been and then remains invested as aforesaid, and in case dividends to the amount hereinbefore limited have been paid, make such a rateable reduction in the rates for water to be furnished by them as in the judgment of the said court or sheriff shall be proper, but so as such rates, when reduced, shall ensure to the undertakers, regard being had to the amount of profit before received, a profit as near as may be to the prescribed rate.

See notes to s. 35 of the Gasworks Clauses Act, 1847, *ante*, p. 211.

Court may order petitioner to pay the costs of groundless petitions.

81. Provided always, that if, in the case of any petition so presented, it appear to the said court or sheriff that there was no sufficient ground for presenting the same, the said court or sheriff may, if they or he think fit, order the petitioner to pay the whole or any part of the costs of or incident to such petition (the amount thereof to be determined by the said court or sheriff), and the costs so ordered to be paid shall be recoverable in the same way as damages are recoverable under this or the special Act.

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Penalty on undertakers refusing to produce books, vouchers, etc.

82. If the undertakers shall, for seven days after being required to produce to the said court or sheriff, or to the said accountant, or other person as aforesaid, any books of account, or other books, bills, receipts, vouchers, or papers relating to their pecuniary affairs, refuse or neglect to produce such books, bills, receipts, vouchers or papers, they shall forfeit the sum of one hundred pounds for every such refusal or wilful neglect, and the further sum of ten pounds for every day during which such refusal or wilful neglect shall continue after the expiration of the said seven days; such respective penalties to be recovered by any person who will sue for the same, with full costs of suit, in any of the superior courts.

Annual account to be made up by undertakers, and sent to the clerk of the peace in England or Ireland, or to the sheriff clerk in Scotland, and to be open to inspection.

83. And with respect to the yearly receipt and expenditure of the undertakers, be it enacted, that the undertakers shall, in each year after they have begun to supply water under this or the special Act, cause an account in abstract to be prepared of the whole receipt and expenditure of all rates or other monies levied under the powers of this or the special Act for the year preceding, under the several distinct heads of receipt and expenditure, with a statement of the balance of such account, duly audited and certified by the chairman of the undertakers, and also by the auditors thereof, if any; and a copy of such annual account shall be sent free of charge, to the clerk of the peace for the county in which the waterworks are situated, if the waterworks are situated in England or Ireland, and if the waterworks are situated in Scotland, to the sheriff clerk of such county, on or before the thirty-first day of January in each year, under a penalty of twenty pounds for each default; and the copy of such account so sent to the said clerk shall be kept by him, and shall be open to inspection by all persons, at all seasonable hours, on payment of one shilling for each inspection.

No forms of accounts are prescribed. See *post*, pp. 574, 575, where will be found a form of annual working statement prepared by Messrs. Wood, Drew & Co., chartered accountants.

84. [*Tender of amends.*]

This section has been repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56), which also repeals the corresponding section (39) in the Gasworks Clauses Act, 1847. See the note to that section, *ante*, p. 213, and the Public Authorities Protection Act, 1893, and cases decided under it, *post*, p. 1062.

Recovery of damages and penalties.

And with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices or to the sheriff, be it enacted as follows:

Railways Clauses Consolidation Act, 1845, as to damages, etc., to be incorporated with this and the special Act.

85. If the waterworks be in England or Ireland, the clauses of the Railways Clauses Consolidation Act, 1845, with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, shall be incorporated with this and the special Act; and if the waterworks be in Scotland, the clauses of the Railways Clauses Consolidation Act (Scotland), 1845, with respect to the recovery of damages not specially

Sect. 85. provided for, and to the determination of any other matter referred to the sheriff or to justices, shall be incorporated with this and the special Act; and such clauses shall apply to the waterworks and to the undertakers respectively, and shall be construed as if the word "undertakers" had been inserted therein instead of the word "company."

The clauses of the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), here referred to, are those from the 140th to 160th inclusive. For the substance of them and as to various repeals, see *ante*, p. 214.

As to the Railways Clauses (Scotland) Act, see the notes at p. 215.

For cases decided under the above section in regard to recovery of water rate before justices, see notes to s. 40 of the Gasworks Clauses Act, 1847, *ante*, p. 214.

86. [*Repealed by Statute Law Revision Act,* 1875 (38 & 39 Vict. c. 66).]

All things required to be done by two justices in England and Ireland, may, in certain cases, be done by one, and in Scotland, by the sheriff, etc.

87. All things herein or in the special Act, or any Act incorporated therewith, authorised or required to be done by two justices may and shall be done in England and Ireland by any one magistrate having by law authority to act alone for any purpose with the powers of two or more justices, and in Scotland by the sheriff of any county, or his substitute.

Certain words omitted repealed by Statute Law Revision Acts, 1891 and 1894 (54 & 55 Vict. c. 67, and 57 & 58 Vict. c. 56).

Penalties, etc., imposed in respect of offences committed within the metropolitan police district to be paid to the receiver, and applied under 2 & 3 Vict. c. 71.

88. Every penalty or forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any byelaw in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied, in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied, by an Act passed in the third year of the reign of her present Majesty, intituled "An Act for regulating the police courts in the metropolis"; and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal, and upon the same terms, as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses, as they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned Act.

See s. 47 of the Act here mentioned.

Persons giving false

89. Every person who upon any examination upon oath under the provisions of this or the special Act, or any Act incorporated therewith,

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shall wilfully and corruptly give false evidence shall be liable to the penalties of wilful and corrupt perjury.

evidence liable to penalties of perjury.

And with respect to access to the special Act, be it enacted as follows:

Access to Special Act.

Copies of special Act to be kept by undertakers in their office and deposited with the clerks of the peace, etc., and be open to inspection.

90. The undertakers shall at all times after the expiration of six months after the passing of the special Act keep in their principal office of business a copy of the special Act, printed by the printers to her Majesty, or some of them, and shall also within the space of such six months deposit in the office of the clerk of the peace in England or Ireland, and of the sheriff clerk in Scotland, of the county in which the undertaking is situated, a copy of such special Act, so printed as aforesaid; and the said clerk of the peace and sheriff clerk shall receive, and they and the undertakers respectively shall keep, the said copies of the special Act, and shall allow all persons interested therein to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an Act passed in the first year of the reign of her Majesty, intituled "An Act to compel clerks of the peace for counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament."

7 Will. 4 & 1 Vict. c. 83.

The Act here referred to may now be cited as the Parliamentary Documents Deposit Act, 1837 (Short Titles Act, 1896 (59 & 60 Vict. c. 14)). See its provisions, *ante*, p. 432.

Penalty on undertakers failing to keep or deposit such copies.

91. If the undertakers fail to keep or deposit any of the said copies of the special Act, as hereinbefore mentioned, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

Undertakers not exempt from provisions of 57 Geo. 3, c. xxix., or from the laws regulating sewers.

92. And be it enacted, that nothing in this Act contained shall be deemed to exempt the undertakers from the provisions of an Act passed in the fifty-seventh year of the reign of his late Majesty King George the Third, intituled "An Act for better paving, improving, and regulating the streets of the metropolis, and removing and preventing nuisances and obstructions therein," or from the laws of sewers for the time being in force within ten miles from the Royal Exchange in the city of London.

See the note under s. 47 of the Gasworks Clauses Act, 1847, *ante*, p. 218. And see also *New River Co.* v. *Westminster Corporation* (1904), 68 J. P. 358.

Undertakers not exempt from the provisions of any future general Act.

93. Nothing herein, or in the special Act contained, shall be deemed to exempt the undertakers from any general Act relating to waterworks, or any Act for improving the sanitary condition of towns and populous districts, which may be passed in the same session of Parliament in which the special Act is passed, or any future session of Parliament.

Certain words omitted repealed by the Statute Law Revision Act, 1891 (54 & 55 Vict. c. 67).

See *Grand Junction Waterworks Co.* v. *Hampton U. D. C.* and other cases cited under s. 1 of the Gasworks Clauses Act, 1847, at p. 147, *ante*.

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Act may be amended, etc.

94. [*Repealed by Statute Law Revision Act*, 1875 (38 & 39 *Vict. c.* 66).]

WATERWORKS CLAUSES ACT, 1863.

(26 & 27 VICT. C. 93.)

An Act for consolidating in One Act certain Provisions frequently inserted in Acts relating to Waterworks. [28th July 1863.]

10 & 11 Vict. c. 17.

WHEREAS the Waterworks Clauses Act, 1847, was passed in order to comprise in one Act sundry provisions which were at the time of the passing of that Act usually introduced into Acts of Parliament authorising the construction of certain waterworks:

And whereas sundry provisions of the like nature, but not comprised in the said Act, are now frequently introduced into Acts of Parliament relating to waterworks, and it is expedient to comprise such last-mentioned provisions also in one Act, and that as well for the purpose of avoiding the necessity of repeating such provisions in special Acts relating to waterworks as for insuring greater uniformity in the provisions themselves.

The rest of the preamble is repealed by the Statute Law Revision Act, 1893 (56 & 57 Vict. c. 14).

PRELIMINARY.

Short title.

1. This Act may be cited as "The Waterworks Clauses Act, 1863"; and "The Waterworks Clauses Act, 1847," and this Act may be cited together as "The Waterworks Clauses Acts, 1847 and 1863."

Application of Act and interpretation of terms.

2. This Act shall apply to any waterworks to which any special Act hereafter passed and incorporating this Act relates; and every such special Act is hereinafter referred to as "the special Act."

Terms used in this Act have the same meanings as the same terms have when used in the Waterworks Clauses Act, 1847.

The provisions respecting the recovery of penalties contained in the last-mentioned Act shall be incorporated with this Act.

SECURITY OF RESERVOIRS.

And with respect to the security of the reservoirs constructed by the undertakers, be it enacted as follows:

Power for justices to inquire as to danger of reservoir.

3. Whenever any person interested complains to two justices that any reservoir constructed by the undertakers is in a dangerous state, such justices shall forthwith make inquiry into the truth of the complaint; or two justices on their own view, and without complaint by any person may proceed under the present provisions as if a complaint had been so made to them.

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NOTE.

The report of the Select Committee on the Waterworks Bill, 1865 [Sessional Paper, 401], contains—the committee having had before them much evidence as to the bursting of the Bradfield reservoir of the Sheffield Waterworks Company on March 11th, 1864—the following recommendations, but nothing has been done to carry the same into effect:

1. That in all cases in which it is proposed to construct a large reservoir, the undertakers should submit to the Home Office or Board of Trade plans and sections of the site selected for such reservoir, and of the works to be erected, and also descriptions of the mode of construction.

2. That in all cases it should be the duty of the Home Office or Board of Trade to send a competent person to such site in order to verify and report upon such plans and sections and descriptions.

3. That it should be the duty of the Home Office or Board of Trade to submit such plans and sections and descriptions, together with the observations of the person so sent, to any select committee appointed by either House of Parliament to consider any bill by which powers are to be given to construct the contemplated works.

4. That it shall be the duty of the Home Office or Board of Trade to send some competent person to inspect and report on the works that are to be constructed, so that if there be any glaring deviation from the rules laid down by any private Act under which the reservoir inspected may be constructed, or by any general Act respecting waterworks that may be passed, the deviation may be made known to the Home Office or Board of Trade. And it seems important, in order that competent inspectors should be employed by the Government, that they should receive ample remuneration for their labour and services.

5. That when any reservoir inspected as above is completed, the undertakers should be bound to give due notice of such completion to the Home Office or Board of Trade, and that such reservoir shall not be filled with water until after the expiration of a specified time. And that during such time it shall be competent to the Home Office or Board of Trade to prohibit the undertakers from allowing water to be let into such reservoir. But if within the specified time no such prohibition be issued, then it may be competent to the undertakers to fill the reservoirs with water.

6. And further, the committee having found that large reservoirs have at times been allowed to decay and become dangerous, they suggest that an adequate supervision over all large reservoirs should be maintained by the Home Office or Board of Trade; and to that end, from time to time, competent persons should be sent to inspect and report upon such reservoirs.

7. The committee do not intend to diminish in any degree the responsibility of undertakers of waterworks contemplated by the bill referred to them, to pay all such damage as may result from the water stored by them. In the opinion of the committee, the provisions by which such responsibility is imposed upon such undertakers should be stringent and completely unambiguous.

Cf. s. 53 of the Public Health Act, 1875, *post.*

As to special clauses providing for compensation in the case of bursting of reservoirs or aqueducts, see INTRODUCTION.

Order of justices for immediate repair.

4. If, on any such inquiry, the justices are satisfied that the complaint is well founded, and that the reservoir is in a dangerous state, and that the danger is so imminent as not to admit of delay in removing the cause of complaint, they shall order such person as they think fit to enter on the property of the undertakers, and to lower the water in the reservoir, and to execute and do all such works and things as the justices think requisite and proper for removing the cause of complaint.

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Order of justices on undertakers to repair reservoir.

5. If, on any such inquiry, the justices are satisfied that there is good cause of complaint, but are not satisfied that the reservoir is in such an imminently dangerous state as not to admit of delay in removing the cause of complaint, they shall issue their summons to the undertakers to answer the complaint; and upon hearing the parties, the justices may, or upon default of appearance of the undertakers, then in their absence, the justices shall order the undertakers, within such period as the justices think reasonable and specify in the order, to lower the water in the reservoir, and to execute and do all such works and things as the justices think requisite and proper for removing the cause of complaint.

Order of justices on failure of undertakers to repair.

If the undertakers fail to execute or do within that period any such work or thing, the justices who made the order, or any other two justices, on being satisfied of such failure, may either order such persons as the justices think fit to enter on the property of the undertakers, and to lower the water in the reservoir, and to execute and do all such works and things as the justices think requisite and proper for removing the cause of complaint; or may, if they think fit, by order impose on the undertakers a penalty, not exceeding ten pounds, for every day during which such failure continues after the making of the order imposing the penalty.

Form of order.

6. Any order of justices made in any of the cases aforesaid shall be in writing under their hands, and may be in the form set forth in the schedule to this Act, with such variations as circumstances require.

See p. 544 for this form.

Persons acting under order not trespassers.

7. Any person acting under and in pursuance of any such order shall not be deemed a trespasser; and if any person wilfully obstructs any person lawfully acting in obedience to any such order, or wilfully does, or instigates, or suffers to be done, anything in contravention thereof, he shall for every such offence be liable to a penalty not exceeding fifty pounds.

Order for payment of costs and expenses.

8. The justices may order all, or such part as they think fit, of the costs of and incident to the applying for and obtaining of any such order to be paid by the undertakers, and also all, or such part as the justices think fit, of the expenses of the works and things executed and done in pursuance of any such order by any person other than the undertakers, to be paid by the undertakers to such person as the justices appoint.

If the justices before whom the complaint is made think that there is no sufficient ground for the complaint, they may, if they think fit, order the complainant to pay to the undertakers the whole or any part of their costs of or incident to the complaint.

Appeal by undertakers.

9. If the undertakers consider themselves aggrieved by any order or determination of justices under the present provisions, they may in like manner and subject to the like conditions as by the Railways Clauses Consolidation Act, 1845, are provided in the case of appeals in respect of penalties, appeal to the court of general or quarter sessions for the

county or place where the cause of appeal arises; and that court may, on the hearing of the appeal, either affirm or quash the order or determination, or make such other order in the premises as may seem fit; and may make such order as to the costs, both of the original proceedings and of the appeal, as may seem fit; but the order or determination appealed against shall, pending the appeal, continue in force.

See *ante*, p. 214.

Undertakers not to be responsible for consequences of order.

10. Notwithstanding anything in the special Act contained, the undertakers shall not be liable to pay any damages, penalties, costs, charges, or expenses for or in respect of, or be answerable or accountable for, any diminution or cessation of the supply of water, or any other breach or non-performance of their or any of their duties, liabilities or obligations under the special Act, that may be occasioned by or result from the execution of any such order.

Provisions as to Scotland.

11. The present provisions with respect to the security of reservoirs shall apply to England and Ireland; and they shall also apply to Scotland, subject to the following variations, namely,—the sheriff shall be deemed to be empowered thereby, as well as two justices; and the appeal given shall lie from two justices in manner provided by sections one hundred and fifty-one and one hundred and fifty-two of the Railways Clauses Consolidation (Scotland) Act, 1845, and shall lie from a sheriff substitute to the sheriff depute, where the matter comes in the first instance before a sheriff substitute; and in that case the sheriff depute shall hear and determine the appeal, and may either confirm, recall, vary, or supersede the order of the sheriff substitute as he thinks proper; and the costs of the appeal shall be in the discretion of the sheriff; and the order or judgment of the sheriff in the appeal shall be final.

The sections of the Railways Clauses Consolidation (Scotland) Act, 1845, referred to have been repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19). See now the Summary Jurisdiction (Scotland) Act, 1908.

SUPPLY OF WATER.

And with respect to the supply of water to be furnished by the undertakers, be it enacted as follows:

Supply for other than domestic purposes.

12. A supply of water for domestic purposes shall not include a supply of water for cattle, or for horses, or for washing carriages where such horses or carriages are kept for sale or hire or by a common carrier, or a supply for any trade, manufacture, or business, or for watering gardens, or for fountains, or for any ornamental purpose.

As to what is a "domestic purpose," see notes to s. 35 of the Waterworks Clauses Act, 1847, *ante*, pp. 466 *et seq.*

See the provisions of clauses 16 and 17 of the Model Water Bill, *post*, p. 707, as to supply for other than domestic purposes.

Want of supply for

13. Where the undertakers are authorised by the special Act to supply water for other than domestic purposes, they shall not be

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other than domestic purposes, when excused.

liable, in the absence of express stipulation, under any agreement for the supply of water for other than domestic purposes, to any penalty or damages for not supplying such water, if the want of such supply arises from frost, unusual drought, or other unavoidable cause or accident.

The effect of this section and s. 43 of the Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), was thus explained by CAVE, J., in his judgment in *Sheffield Waterworks Co.* v. *Carter* (1882), 8 Q. B. D. 632 : " The general Act of 1863, by s. 13, exempts the undertakers from penalties or damages for not supplying water under any agreement to supply it for other than domestic purposes, if the want of such supply arose from frost, unusual drought, or other unavoidable cause or accident. But this section is expressly limited to the case of water supplied under an agreement, and does not apply to water supplied compulsorily; and it was contended that it was unreasonable to hold the supply for baths to be compulsory, because in that case the company would be liable for the non-supply of water for bath purposes where the non-supply had arisen from such causes as those above mentioned. But the answer is, the company would not be liable under those circumstances. 'When a party by his own contract creates a duty or charge upon himself he is bound to make it good if he may, notwithstanding any accident by inevitable necessity, because he might have provided against it by his contract; but where the law creates a duty or charge, and the party is disabled from performing it without any default on him, and hath no remedy over, then the law will excuse him' (*Paradine* v. *Jane* (1648), Aleyn, 26). Moreover, s. 43 of the general Act of 1847, which fixes a penalty for the neglect or refusal to supply water, has an express exception in case of frost, unusual drought, or other unavoidable cause or accident, or during necessary repairs."

Power to let meters for hire.

14. Where the undertakers are authorised by the special Act to supply water by measure, they may let for hire to any consumer of water so supplied any meter or instrument for measuring the quantity of water supplied and consumed, and any pipes and apparatus for the conveyance, reception, or storage of the water, for such remuneration in money as may be agreed upon between them and the consumer, which shall be recoverable in the same manner as rates due to the undertakers for water; and the meters, instruments, pipes, and apparatus shall not be subject to distress or to the landlord's hypothec for rent of the premises where the same are used, or be attached or taken in execution under any process of any court of law or equity, or under or in pursuance of any adjudication or order in bankruptcy, or other legal proceeding, against or affecting the consumer of the water or the occupier of the premises, or other the person in whose possession the meters, instruments, pipes, and apparatus may be.

The above section authorises the *letting* and not the *selling* of meters. *Cf.*, however, clause 19 of the Model Water Bill, *post*, p. 707, and see the same clause as to the letting for hire of water fittings.

See the corresponding sections in the Gasworks Clauses Acts, 1847 and 1871, *ante*, pp. 188, 230.

See *Sheffield Waterworks Co.* v. *Carter*, *Sheffield Waterworks Co.* v. *Brooks*, and *Sheffield Waterworks Co.* v. *Bingham*, cited *ante*, p. 476.

As to supply by meter where the waterworks are in the hands of a local authority, see Public Health Act, 1875, ss. 58—60, *post*.

Power for ascertaining

15. The officers of the undertakers may enter any house, building, or lands, to, through, or into which water is supplied by them by quantity consumed by meter, and for removing meters, etc.

measure, in order to inspect the meters, instruments, pipes, and apparatus for the measuring, conveyance, reception, or storage of water, or for the purpose of ascertaining the quantity of water supplied or consumed, and may from time to time enter any house, building, or lands, for the purpose of removing any meter, instrument, pipe, or apparatus the property of the undertakers; and if any person hinders any such officer from entering or making such inspection, or effecting such removal, he shall for every such offence be liable to a penalty not exceeding five pounds; but, except with the consent of a justice or the sheriff, this power of entry shall be exercised only between the hours of ten in the forenoon and four in the afternoon.

PROTECTION OF WATER.

And with respect to the waste or misuse of the water supplied by or belonging to the undertakers, be it enacted as follows:

Power to cut off water in certain cases.

16. If any person supplied with water by the undertakers wrongfully does or causes or permits to be done anything in contravention of any of the provisions of the special Act, or wrongfully fails to do anything which, under any of those provisions, ought to be done for the prevention of the waste, misuse, undue consumption or contamination of the water of the undertakers, they may (without prejudice to any remedy against him in respect thereof) cut off any of the pipes by or through which water is supplied by them to him, or for his use, and may cease to supply him with water, so long as the cause of injury remains or is not remedied.

In regard to waste or misuse of water, see further the various provisions on that subject contained in the Waterworks Clauses Act, 1847, s. 54, *ante*, p. 498, and the chapter on that subject, *post*, p. 713.

As to power of entry, see s. 57 of the Waterworks Clauses Act, 1847, *ante*, p. 499.

As to the metropolis, see the Act of 1871, s. 17, *post*, p. 562, and the Regulations, *post*, pp. 716 *et seq.*

Penalty for waste, etc., of water by non-repair of pipes, etc.

17. If any person supplied with water by the undertakers wilfully or negligently causes or suffers any pipe, valve, cock, cistern, bath, soil-pan, water-closet, or other apparatus or receptacle to be out of repair, or to be so used or contrived as that the water supplied to him by the undertakers is or is likely to be wasted, misused, unduly consumed, or contaminated, or so as to occasion or allow the return of foul air or other noisome or impure matter, into any pipe belonging to or connected with the pipes of the undertakers, he shall for every such offence be liable to a penalty not exceeding five pounds.

See *Chapman* v. *Fylde Waterworks Co.*, [1894] 2 Q. B. 599, in which it was decided by the Court of Appeal that the owner or occupier had no power to break up the street for the purpose of repairing a service pipe, and that the undertakers, and they only, had that power. Kay, L.J., in that case, said: "It is plain to my mind that this section" (meaning s. 17) "does not refer

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to a pipe or guard such as this in the public street, which the occupier has no power to repair because he has no power to break up the street for that purpose" (p. 607).

See also *Colne Valley Water Co.* v. *Hall*, cited *ante*, p. 484.

Penalty for application of water contrary to agreement.

18. If any person—

First, not having from the undertakers a supply of water for other than domestic purposes, uses, for other than domestic purposes, any water supplied to him by the undertakers; or

Secondly, having from the undertakers a supply of water for any other than domestic purposes, uses, for any purposes other than those for which he is entitled to use the same, any water supplied to him by the undertakers,—

he shall for every such offence be liable to a penalty not exceeding forty shillings, without prejudice to the right of the undertakers to recover from him the value of the water misused.

It will be observed that the undertakers are authorised to recover not only the penalty but also the value of the water. See *Grand Junction Waterworks Co.* v. *Benn*, Jl. of G. L., March 29th, 1904, p. 853.

By an agreement between a local authority and a water company certain mains, standpipes, etc., of the local authority were taken over by the water company, who, in consideration of an annual payment, contracted to supply the standpipes with water sufficient for domestic purposes, the washing of carts, and for the purposes of fire, but not for the flushing of sewers or the watering of streets. Certain bakers who were ratepayers drew water from the standpipes and used it for the purposes of their bakeries. It was held that they were persons "having from the undertakers a supply of water" within the meaning of the second portion of the above section (*Andrews* v. *Witts* (1901), 84 L. T. 124; 65 J. P. 281.

In *Cambridge University and Town Waterworks Co.* v. *Hancock* (1910), 74 J. P. 477, the respondent, who had no supply of water for other than domestic purposes, was summoned by the water company for using part of the water for his trade as a dairyman. The water in question was used for washing the respondent's yard and a milk float used in his business, and some of it in order to avoid waste was allowed to flow from a tap through a hose-pipe into a trough, the water for which came from a well and was not supplied by the appellants:—*Held*, that the user of the water supplied by the appellants was not a user for domestic purposes, and that therefore the respondent had committed the offence charged. The respondent was also summoned for affixing the hose-pipe to a communication pipe, without the consent of the company, and it was proved that the hose-pipe was temporarily attached by string to the tap and was used for washing the yard and the milk float:—*Held*, that the fact that the hose-pipe was only temporarily attached did not prevent the affixing of it from being an offence, and that therefore the respondent had committed this offence also.

Penalty for extension or alteration of pipes.

19. It shall not be lawful for the owner or occupier of any premises supplied with water by the undertakers, or any consumer of the water of the undertakers, or any other person to affix or cause or permit to be affixed any pipe or apparatus to a pipe belonging to the undertakers, or to a communication or service pipe belonging to or used by such owner, occupier, consumer, or other person, or to make any alteration in any such communication or service pipe, or in any apparatus connected therewith, without the consent in every such case of the undertakers; and if any person acts in any respect in contravention of the provisions of the present section, he shall for every such offence be liable to a penalty not exceeding five pounds, without prejudice to the right of the undertakers to recover damages from him in respect of any injury done to their property, and without prejudice to their right to recover from him the value of any water wasted, misused, or unduly consumed.

See *Chapman* v. *Fylde Waterworks Co.*, cited *ante*, p. 484, *Colne Valley Water Co.* v. *Hall*, cited *ante*, p. 484, and *Cambridge, &c. Waterworks Co.* v. *Hancock*, cited *ante*, p. 542.

On a case stated by justices, it appeared that the appellant who was in the habit of leaving her house empty and locked up during the winter months, placed a certain stop-tap to the service pipe of her house in order that she might shut off the water during her absence, and so prevent a recurrence of bursts. It was contended on her behalf that this stop-tap was not an "apparatus" or an "alteration" within s. 19 of the Act of 1863, and also that the section was intended to apply only to cases of wilful waste of water. The court dismissed the appeal (*Williams* v. *Llandudno U. D. C.* (1897), 14 T. L. R. 18).

The appellant was summoned by the respondents, the Metropolitan Water Board, for unlawfully fixing a pipe to the communication or service pipe at No. 40, Dunstan Street, Hackney, without the consent of the respondents, contrary to s. 19 of the Waterworks Clauses Act, 1863. It was proved that the appellant was the owner of Nos. 40 and 42, Dunstan Street, which adjoined one another, and formed part of a continuous row of houses. Originally each house had a separate communication pipe, and had been supplied by the respondents with water direct from the main, but owing to the appellant not having remedied certain defects in the fittings at No. 42, the respondents cut off the supply from No. 42 at a time when the house was unoccupied. The appellant then, without the consent of the respondents, affixed the pipe within No. 42 to that within No. 40, thus making one communication pipe for the two houses. The respondents had demanded the water rate from the appellant for the period in question, but on the day of the hearing of the summons it had not been paid. The appellant relied upon No. 5 of the regulations made under s. 17 of the Metropolis Water Act, 1871, which regulation provides that as far as is consistent with the special Acts of the company, in the case of a group or block of houses the water rates of which are paid by one owner, the owner may, at his option, have one sufficient communication pipe for such group or block. It was held that the above regulation was no justification for the appellant having taken the law into his own hands, and that he had committed the offence charged (*Kyffin* v. *Metropolitan Water Board* (1908), 72 J. P. 517).

See also *Philp* v. *Magistrates, etc. of Dunfermline* (1902), Ct. of Sess. Cas. 4 F. (Justiciary), 34.

Penalty for use of water without agreement.

20. If any person, not being supplied with water by the undertakers, wrongfully takes or uses any water from any reservoir, watercourse, conduit, or pipe belonging to the undertakers, or from any pipe leading to or from any such reservoir, watercourse, conduit, or pipe, or from any cistern or other like place containing water belonging to the undertakers, or supplied by them for the use of any consumer of the water of the undertakers, he shall for every such offence be liable to a penalty not exceeding five pounds.

See also s. 59 of Waterworks Clauses Act, 1847, *ante*, p. 499.

Water so supplied and standing in a consumer's pipes may be the subject of larceny at common law (*Ferens* v. *O'Brien* (1883), 11 Q. B. D. 21).

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RECOVERY OF RATES.

And with respect to the recovery of water rates and other money, be it enacted as follows:

Recovery of rates by action.

21. If any person refuses or neglects to pay to the undertakers any rate or sum due to them under the special Act, they may recover the same, with costs, in any court of competent jurisdiction; and their remedy under the present section shall be in addition to their other remedies for the recovery thereof.

See the notes to s. 74 of the Waterworks Clauses Act, 1847, *ante*, p. 515, and see *North Darley U. D. C.* v. *Morton* (1906), 70 J. P. N. 209 (a county court case).

SCHEDULE.

FORM OF ORDER OF JUSTICES.

To A. B., of etc.

We the undersigned, two of her Majesty's justices of the peace acting for the [county] of , do hereby order and direct you [and such person and persons as you may require to aid and assist you herein] forthwith to lower the water in the [*here describe the reservoir and the extent to which the water is to be lowered*], and to do all such works and things as are requisite to repair and make secure the said reservoir [and you shall do as little injury as possible to the property of the , and for acting as you are hereby directed this shall be your sufficient warrant].

Given under our hands this day of one thousand eight hundred and .

A. B.
C. D.

WATER COMPANIES (REGULATION OF POWERS) ACT, 1887.

(50 & 51 VICT. C. 21.)

An Act to limit the Powers of the Water Companies to cut off the tenant's Water Supply where the rate is paid by the landlord.

[8th August 1887.]

Whereas it is expedient to make further provision with respect to the powers of companies supplying water for profit in England:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

This preamble was repealed by the Statute Law Revision Act, 1908 (8 Edw. 7, c. 49).

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Short title.

1. This Act may be cited as the Water Companies (Regulation of Powers) Act, 1887.

Extent of Act.

2. This Act shall not extend to Scotland or Ireland.

Application of Act.

3. This Act shall apply to every water company which is a trading company supplying water for profit, and to which any of the provisions of the Waterworks Clauses Act, 1847, have been or shall be made applicable by any special Act or provisional order confirmed by Parliament, and every such special Act and provisional order shall be deemed to be amended by this Act, and shall be construed accordingly.

The undertakings of the metropolitan water companies have now been transferred to the Metropolitan Water Board (see the Metropolis Water Act, 1902, *post*).

The above section confines the operation of the Act to private companies having parliamentary powers. It does not, therefore, apply in the case of municipal corporations and local authorities who are water undertakers. Nevertheless, in some Acts of the latter class provisions similar to those of s. 4 may be found. See, *e.g.*, s. 30 of the Southport, Birkdale and West Lancashire Water Board Act, 1905.

Water not to be cut off where the water rate is payable by the owner.

4. Where the owner and not the occupier is liable by law or by agreement with the water company to the payment of the water rate in respect of any dwelling-house or part of a dwelling-house occupied as a separate tenement, no water company shall cut off the water supply for non-payment of the water rate, but such water rate, without prejudice to the other remedies of the company for enforcing payment thereof from such owner, shall, together with interest thereon at the rate of five pounds per centum per annum, computed from the expiration of one month from the time when the same has been claimed by the company until receipt thereof by the company, be a charge on such dwelling-house in priority to all other charges affecting the premises; and (without prejudice to such charge) the amount may be recovered, with the costs incurred, from the owner or from the occupier for the time being in the same manner as water rates may by law be recovered: Provided always, that proceedings shall not be taken against the occupier until notice shall have been given to him or left at his dwelling-house to pay the amount due for water rate out of the rent then due or that may thereafter become due from him, and he shall have omitted so to pay such water rate; and provided also, that no greater sum shall be recovered at any one time from any such occupier than the amount of rent owing by him, or which shall have accrued due from him since such notice shall have been given or left as aforesaid, and that every such occupier shall be entitled to deduct from the rent payable by him the sum so recovered from him or which he shall have paid on demand.

The effect of this Act is that a purchaser takes subject to any charge created by this section, and becomes personally liable for any arrears. Thus, in *East London Waterworks Co.* v. *Kellerman*, [1892] 2 Q.B. 72, the purchaser of the freehold of a dwelling-house (the rent of which did not exceed £20,

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and the water rate of which under the East London Waterworks Act, 1853 (16 & 17 Vict. c. clxvi.), s. 81, was payable by the owner, and not by the occupier) was held liable to a personal action at the suit of the water company to recover arrears of water rate which accrued due before the date of the purchase. So in the case of the *Lambeth Waterworks Co.* v. *Richardson*, Jl. of G. L., April 1st, 1890, and May 20th, 1890, it appeared that the owner of a row of houses (the rents of which exceeded £10, and the water rates of which were, therefore, at law payable by the tenant) "farmed" the water rates, and paid the company a certain sum per annum in respect of them. The defendant, his superior landlord, having successfully brought an action to recover possession, the company claimed from him certain arrears of the water rates. The county court judge, and afterwards the Queen's Bench Division, decided in favour of the company's claim.

P.'s landlord had agreed to pay water rate, and had duly paid it, when P. received notice to quit. P. refused to quit, and the landlord requested the C. Waterworks Company to cut off the water, which they did without any notice to P.:—*Held*, that the magistrate was wrong in holding that the company had acted in contravention of this statute (*Chelsea Waterworks Co.* v. *Paulet* (1888), 52 J. P. 724).

The owner of a block of flats, which were respectively of an annual value of less than £20, agreed with a water company for the supply of water to the flats by meter. The owner then mortgaged the premises, and upon his getting into difficulties, the defendant was appointed to act as receiver of the rents on behalf of the mortgagee. When the defendant was appointed there were certain arrears of water rent due to the plaintiffs, who were the successors of the water company. The company's special Act provided that the owners of all houses, not exceeding the annual rental of £20, should be liable for the water rates; and that the person receiving the rents should for that purpose be deemed to be the owner. This special Act incorporated the Waterworks Clauses Act, 1847, by s. 3 of which the term "water rate" is made to include any rent, reward or payment to be made to the undertakers for a supply of water. The defendant having refused to pay the rates which had accrued due prior to his appointment, it was held that he was not liable to pay them, as he was not the "owner" within the meaning of s. 4 of the Water Companies (Regulation of Powers) Act, 1887 (*Metropolitan Water Board* v. *Brooks*, [1910] 2 K. B. 134). On appeal, the decision of CHANNELL, J., in the last-mentioned case was affirmed on other grounds (see 75 J. P. 41).

In *Bibby* v. *The Metropolitan Water Board*, Jl. of G. L., October 11th, 1910, vol. cxii., p. 142, the Board, who had cut off the supply instead of demanding the rate from the owner, were ordered to pay damages to the owner for the period during which the water was cut off, as the owner had been unable to let the premises in consequence.

Where a local authority had incurred expenses which by s. 62 of the Local Government Act, 1858 (21 & 22 Vict. c. 98) (corresponding to s. 257 of the Public Health Act, 1875 (38 & 39 Vict. c. 55)), were made a charge upon the premises in respect of which the same were incurred:—*Held*, that such expenses became a charge upon the premises at the date at which they were incurred, and that the period of twelve years, limited by the Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 8, commenced to run from that date (*Hornsey L. B.* v. *Monarch Investment Building Society* (1889), 24 Q. B. D. 1).

Penalty on cutting off of supply in contravention of the Act.

5. In the event of any such supply being cut off in contravention of this Act, the company cutting off the same shall be liable to a penalty not exceeding five pounds for each day during which the water shall remain cut off, which penalty shall be recoverable summarily from the company by, and shall be paid to, the person aggrieved.

METROPOLITAN WATER SUPPLY.

Establishment of the Metropolitan Water Board.

The Metropolitan Water Board was established under the Metropolis Water Act, 1902, for the purpose of acquiring by purchase and of carrying on the undertakings of the Metropolitan Water Companies (the New River Company, the East London Waterworks Company, the Southwark and Vauxhall Waterworks Company, the West Middlesex Waterworks Company, the Lambeth Waterworks Company, the Chelsea Waterworks Company, the Grand Junction Waterworks Company, the Kent Waterworks Company, and the Staines Reservoirs Joint Committee), and the water undertakings of the urban districts of Tottenham and Enfield. It was, however, provided by this Act that parts of the boroughs of Croydon and Richmond, and of the urban districts of Cheshunt and Ware should cease to be within the limits of supply transferred to the Water Board, and that the powers, rights, and duties of the councils of those boroughs and urban districts with respect to the supply of water should extend throughout their respective areas. Provision was made for the supply by the Water Board of water in bulk to any of these four places, and also for a supply of water in bulk to any rural district situate wholly or partly within the limits of supply, the effect of such last-mentioned supply being that any rural district so supplied is to cease to be within the limits of supply of the Board. The Act also reserved to the New River Company their landed estates, houses, and property not directly used for or connected with their water supply.

Limits of supply.

The area within which the Board may supply water consists of the parishes and places in which at the appointed day (June 24th, 1904), the Metropolitan Water Companies were authorised to supply water, and the parishes of Sunbury and Chessington, but subject to the above-mentioned exceptions in favour of Richmond, Croydon, Cheshunt, and Ware. There are provisions in the Act (ss. 3 (read in conjunction with ss. 32—36), 11, 12, 13, 14, and 26) under which the limits of supply may be restricted or extended; and, in particular, the Local Government Board, on the application of the Water Board, may by provisional order, to be confirmed by Parliament, include within the Board's area any district which, having as a rural district, or as part thereof, ceased to be within the area, has subsequently been made an urban district.

The parishes and places included in the limits of supply were shown in an Appendix to the Report of the Water Board for the year ending March 31st, 1907, of which a copy is set out *post*, at pp. 640 *et seq.*

Constitution of the Water Board.

The Water Board is a corporate body and consists of sixty-six members (or sixty-seven or sixty-eight if and according as the chairman or vice-chairman are appointed from outside) appointed by the London County Council, the county councils of Essex, Kent, Middlesex, Surrey, and Hertfordshire, the common council of the city of London, the councils of boroughs and urban districts within the area of the Board, the Conservators of the River Thames, and the Lee Conservancy Board. In several instances councils are grouped for the appointment of a member, the appointment in these cases being made by joint committees. See Third Schedule at p. 634. The number of representatives of each council is prescribed by the Act, but provision is made for a variation of such representation (s. 26 (1)). Members of the Board hold office for three years.

Transfer of powers, etc., of water companies.

The effect of the transfer to the Metropolitan Water Board of the undertakings of the water companies is that the Board may exercise all the rights, powers, authorities, and privileges of the companies, and are subject to all the duties, obligations, and liabilities of the companies under the Acts, charters, orders, and other provisions respectively relating to them (s. 3). The last-mentioned section also makes provision for cases where, immediately before "the appointed day," any company was supplying water otherwise than in bulk in places beyond its limits of supply.

Expenses of Board.

The Act (s. 15) provided for the establishing of a water fund to which all receipts are carried and out of which all payments are made. Any deficiency in the fund is to be met by contributions from the city of London, the Metropolitan boroughs, and the municipal boroughs and urban districts, the councils of which are for the time being entitled to be represented on the Board in proportion to rateable value on April 6th preceding the call of the hereditaments at that date supplied with water.

Before the water supply was taken over by the Board, the charges in the different districts were leviable under the special Acts of the various companies and varied in each district, but in 1907, in pursuance of an obligation imposed upon them by s. 15 (6) the Board promoted a bill which became an Act (Metropolitan Water Board (Charges) Act, 1907), and which provides for uniform scales of charges applicable throughout their limits of supply.

Borrowing powers.

The Board were empowered to borrow money for the purposes of (1) paying money payable to the water companies and to the Tottenham and Enfield councils; (2) purchasing, redeeming, or paying off debenture stock or mortgage debt; (3) executing works authorised by the Acts of the water companies; (4) paying any compensation payable under the Act; and (5) with the consent of the Local Government Board for the purpose of any payment by the Water Board or of any permanent work which they are authorised to execute, and the cost of which ought, in the opinion of the Local Government Board, to be spread over a term of years (s. 16). The last-mentioned and the two following sections direct how money borrowed shall be raised, prescribe the periods for repayment, provide for the issue of water stock, and make provision as to the discharge of loans.

The above is but an outline of the main provisions of the Act, which is set out *in extenso* at p. 594, *post*.

In the other Acts relating to the metropolis which next follow, the transference of the powers of the companies therein referred to to the Metropolitan Water Board must be borne in mind.

METROPOLIS WATER ACT, 1852.*

(15 & 16 VICT. C. 84.)

An Act to make better Provision respecting the Supply of Water to the Metropolis. [1st July, 1852.]

The preamble of this Act is repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

Restriction as to sources of supply of water to the metropolis.

1. It shall not be lawful for any company supplying the metropolis or any part thereof with water for domestic use to take any water for such purpose from any part of the River Thames below Teddington Lock, or from any part of any of the tributary rivers or streams of the River Thames below the highest point where the tide flows in such tributary rivers and streams respectively.

Certain words of this and three succeeding sections have been repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66), and are omitted from the text.

Reservoirs, within a limited distance, to be covered.

2. Every reservoir within a distance in a straight line from Saint Paul's Cathedral in the City of London of not more than five miles, in which water for the supply for domestic use of the metropolis or any part thereof is stored or kept by any company, shall be roofed in or otherwise covered over: Provided always, that this provision shall not extend to any reservoir the water from which is subjected by the company to efficient filtration after it is discharged from such reservoir and before it is passed into the mains or pipes of the company for distribution, or to any reservoir the whole of the water from which is distributed through distinct mains or pipes for other than domestic purposes, nor to any reservoir whatever the water stored in which shall be used exclusively for other than domestic purposes.

Water not to be brought within a limited distance in open aqueducts.

3. No water shall be brought or conducted within the metropolis by any company for the purpose of domestic use, otherwise than through pipes or through covered aqueducts, unless the same shall be afterwards filtered before distribution.

Every company to filter all water supplied by them for domestic use.

4. Every company shall effectually filter all water supplied by them within the metropolis for domestic use, before the same shall pass into the pipes for distribution, excepting any water which may be pumped from wells into a covered reservoir or aqueduct, without exposure to the atmosphere, and which shall not be afterwards mixed with unfiltered water.

See s. 36 of the Metropolis Water Act, 1871 (*post*, p. 570), which provides for the appointment of a water examiner.

Company to give notice to *Board of Trade* (now

5. Three months before any company shall resort to any new source of supply, such company shall give notice in writing thereof to the

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* See introductory remarks at p. 547, *ante*, as to the superseding by the Metropolitan Water Board of the metropolitan water companies referred to throughout this Act.

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Local Government Board) before resorting to new sources of supply, who may thereupon appoint an inspector to report.

Board of Trade; and thereupon, within one month after receipt of such notice, the Board of Trade shall, if they think fit, appoint a competent person as an inspector, who shall report with respect to any sources then specially authorised by Parliament, whether the directions of the special Act have been complied with in reference thereto, and with respect to any new sources not specially authorised by Parliament, whether the same are capable of supplying good and wholesome water for domestic purposes.

Certain words omitted repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

By the Public Health Act, 1872 (35 & 36 Vict. c. 79), s. 35, it was provided that the powers and duties of the Board of Trade under the Metropolis Water Acts, 1852 and 1871, shall be exercisable and performed by the Local Government Board, and the "Local Government Board" shall be deemed to be substituted for the "Board of Trade" wherever the latter expression occurs in the said Acts. By s. 343 and Sched. V., Parts I. and III. of the Public Health Act, 1875, the whole of the Act of 1872 is repealed, "except so far as relates to the metropolis," and s. 35 is substantially re-enacted. The extension of such re-enactment to London was made clear by the Public Health (London) Act, 1891, s. 142 (5). In the sections which follow, the Local Government Board is substituted wherever "Board of Trade" occurs.

Inspector to give notice to companies of his intention to visit new sources.

6. The inspector so appointed as aforesaid shall, within ten days after such appointment, give notice in writing to the company thereof, and of the time at which he proposes to visit and inspect the said sources; and thereupon, in order to enable him to make such report as aforesaid, it shall be lawful for the said inspector to enter the lands wherein such sources respectively are situate, and to examine and make inquiry touching the premises.

Local Government Board to certify their approval or disapproval of new sources.

7. The Local Government Board shall, within twenty-one days after the receipt from the said inspector of his report, send to such company with respect to any such new sources of supply not specially authorised by Parliament a certificate in writing of their approval or disapproval thereof, and with respect to any such sources as shall then be specially authorised by Parliament a notice in writing stating whether in the judgment of the said Local Government Board the directions of the special Act have in reference thereto been complied with.

If Local Government Board disapprove, company not to use new source of supply.

8. After the company shall have received a certificate that the said Local Government Board disapproves of any such new source of supply not specially authorised by Parliament as aforesaid, it shall not be lawful for the company to use the said source; and after receipt of such notice as aforesaid that in the judgment of the said Local Government Board the directions of the special Act with reference to any sources then specially authorised by Parliament have not been complied with, it shall not be lawful for the company, before complying with such directions with reference to such source, to use the same.

On complaint as to quantity and quality Local

9. If at any time complaint as to the quantity or quality of the water supplied by any company for domestic use be made to the Local Government Board by memorial in writing signed by not less than twenty inhabitant householders paying rents for and supplied with water by the company, it shall be lawful for the Local Government Board, at any time within one month after the receipt of such complaint, to appoint a competent person to inquire into and concerning the grounds of such complaint, and to report to the Local Government Board thereon.

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Government Board may appoint a person to inquire and report.

By s. 35 of the Act of 1871 (*post*, p. 570) the Local Government Board may appoint a competent person to inquire into and report on the quality of the water, notwithstanding that no complaint has been made as prescribed by s. 9, *supra*.

10. The person so appointed as aforesaid shall, within three days after such appointment, give notice thereof in writing to the company; and after such notice as aforesaid, he shall have power to inspect and examine the waterworks of the company, and to inquire into and concerning the grounds of such complaint; and the company and their officers shall afford all reasonable facilities for such inspection, examination, and inquiry.

Powers of person appointed.

11. Any person obstructing such inspector in the due prosecution of such inspection, examination, or inquiry, shall forfeit and pay any sum not exceeding ten pounds.

Penalty for obstructing inspector.

12. If after receipt of such report it shall appear to the Local Government Board that the said complaint is well founded, the Local Government Board shall give notice thereof in writing to the company.

Notice to company if complaint well founded.

13. After the receipt of such notice the company shall and they are hereby required within a reasonable time to remove the grounds of such complaint.

Company to remove ground of complaint.

14. Every steam-engine, furnace, or other work in which coals which produce smoke during combustion shall be consumed by any company for the purpose of the waterworks, shall be constructed on the most effectual principle for consuming its own smoke.

Engines to consume their own smoke.

15. [*Provision for constant supply of water by every company.*]

By s. 5 of the Act of 1871, *infra*, p. 557, s. 15 was repealed (so far as regarded its operation within the limits of that Act), except so much thereof as prescribed the height at which the Kent Waterworks Company and the East London Waterworks Company were respectively required to give their supply. Sect. 15, so far as unrepealed, was repealed by s. 38 and the 5th Schedule of the Metropolis Water Act, 1902, *post*, p. 625. See the provisions of the Act of 1871 (ss. 7 *et seq.*) in regard to constant supply.

For a case decided under the portion of the section (s. 15 of the Act of 1852) repealed in 1871, eighteen years after the repeal and in ignorance of the fact, see *West Middlesex Waterworks Co.* v. *Tappenden* (1889), 5 T. L. R. 447.

16. Any company which shall violate, refuse, or neglect to comply with any of the provisions hereinbefore contained shall forfeit to her Majesty the sum of two hundred pounds, and the further sum of one hundred pounds for every month during which they shall continue to violate or to refuse or neglect to comply with the same after they shall have received notice in writing from the Local Government Board to discontinue such violation, refusal, or neglect as aforesaid.

Penalty for non-compliance with the provisions of the Act.

Map of underground works of the companies to be made, and kept at principal office of each company, and be open to inspection.

17. Every company shall, within one year after the passing of this Act, cause a map to be made of the district within which any mains or *district mains* shall have been laid down or formed by them on a scale not less than six inches to a mile, and shall cause to be marked thereon the course and situation of all existing mains and *district mains*, and shall, within six months from the making of any alterations or additions, cause the said maps to be from time to time corrected, and such additions made thereto as may show the line and situation of all such mains and *district mains* as may be laid down or formed by them from time to time; and such map, or a copy thereof, with the date expressed thereon of the last time when the same shall have been so corrected, as aforesaid, shall be kept in the principal office of each company, and shall be open to the inspection of all persons interested in the same within the said district, who shall be at liberty to take copies of or extracts from the same.

Certain words omitted repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

By s. 49 of the Act of 1871, *post*, p. 572, the above section is to be read as if instead of the words "district mains" the word "pipes" were substituted.

The company must mark on the map, and upon every alteration of the same, every screw-cock or apparatus by means of which water is permitted to flow or is prevented from flowing from the main into any pipe within the water limits of such company. See Act of 1871, s. 49, *post*, p. 572.

By the Metropolitan Fire Brigade Act, 1865 (28 & 29 Vict. c. 90), s. 32 (see *post*), the Metropolitan Board of Works are entitled to receive copies or extracts of plans made in pursuance of this Act. The duties of this Board are now transferred to the London County Council. See Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 40 (8).

As to the breaking up of streets in the metropolis for the purpose of laying water pipes, and as to the reinstatement thereof, see the provisions of the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), ss, 109–115, cited *ante*, p. 287.

Companies to furnish particulars of district mains when required.

18. Every company, on the application of any person supplied with water by such company, shall furnish to such person the particulars of any *district main* from which such person is supplied, together with the names of the streets through which such *district main* passes, and the commencement and termination thereof.

It is provided by the Act of 1871, s. 49, *post*, p. 572, that the above section is to be read as if instead of the words "district main" the word "pipe" were inserted.

19—22. [*Repealed by s.* 5 *of the Act of* 1871, *and s.* 38 *and* 5*th Schedule of the Metropolis Water Act,* 1902, *post, p.* 625.]

Cisterns, closets and baths to be so constructed as to prevent waste of the flow or return of impure matter into the mains, etc.

23. Every cistern or other receptacle for water, and every closet, soil-pan, and private bath which shall be supplied with water by any company, shall be so constructed and used as effectually to prevent the waste, misuse, or undue consumption of water, and the flow or return of foul air or other noisome or impure matter into the mains or pipes of the company, or into any pipes connected or communicating therewith; and notwithstanding anything in the Waterworks Clauses Act, 1847, or in this Act contained, no company shall be bound to supply water into any cistern, or other receptacle for water, closet, soil-pan, or private bath, which shall not be so constructed and used. **Sect. 23.**

As to the "Regulations" sanctioned under these Acts, see *post*, p. 714.

Restricting communication with pipes of the company.

24. No person shall make or lay down, or permit to be made or laid down, any pipe or other means or contrivance for taking, using, or obtaining water to communicate with any pipe or apparatus connected with any of the mains or pipes of any company without giving such notice, and except under such superintendence, and according to such direction as is provided by the Waterworks Clauses Act, 1847, with respect to the communication pipes to be laid by the inhabitants.

See s. 19 of the Act of 1863, *ante*, p. 542.

Water may be cut off in certain cases.

25. If any person supplied with water by any company shall wilfully do or cause to be done any act, matter, or thing in contravention of the provisions of this Act, or of the special Act relating to such company, or of any Act incorporated therewith, or shall wilfully omit or neglect to do any matter or thing which under such provisions ought to be done for the prevention of the waste, misuse, or undue consumption, or the contamination of the water of the company, it shall be lawful for the company to turn off the water supplied by them to such person, and to cease to supply such person with water, and also to recover from such person by action or suit in any court of competent jurisdiction the amount of any loss, damage, or injury which such company may sustain by means or in consequence of any such act, matter, or thing as aforesaid, or of any such wilful omission or neglect as aforesaid.

See the Water Companies (Regulation of Powers) Act, 1887, *ante*, p. 545.

By the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), it is provided:

Notice to sanitary authority of water supply being cut off.

> 49.—(1.) Where a water company may lawfully cut off the water supply to any inhabited dwelling-house and cease to supply such dwelling-house with water for non-payment of water rate or other cause, the company shall in every case, within twenty-four hours after exercising the said right, give notice thereof in writing to the sanitary authority of the district in which the house is situated.
>
> (2.) Any company which neglects to comply with the foregoing provision shall be liable to a fine not exceeding ten pounds, and it shall be the duty of the sanitary authority to take proceedings against any company in default.
>
> (3.) This section shall apply to every water company which is a trading company supplying water for profit.

Regulations to be made.

26. It shall be lawful for any company from time to time . . . to make such regulations as shall be necessary or expedient for the purpose of preventing the waste or misuse of water, and therein, amongst other things, to prescribe the size, nature, and strength of the pipes, cocks, cisterns, and other apparatus to be used, and to interdict any arrangements, and the use of any pipes, cocks, cisterns,

Sect. 26. or other apparatus, which may tend to such waste or misuse as aforesaid.

By the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66), the words "with the approval of the Board of Trade," which originally stood in this section, are repealed. The reason of this is that s. 22 of the Act of 1871 makes special provision for the confirmation of the Regulations referred to.

See ss. 17 *et seq.* of the Act of 1871, *post*, p. 562; and as to the "Regulations," see *post*, p. 714.

27. [*Repealed by s.* 5 *of the Act of* 1871, *and s.* 38 *and* 5*th Schedule of the Metropolis Water Act*, 1902, *post*, *p.* 625.]

Short title.

28. In citing this Act in other Acts and in legal instruments it shall be enough to use the expression "The Metropolis Water Act, 1852."

Interpretation of terms.

29. In the construction of this Act the expression "company" shall mean and include any of the companies hereinafter enumerated; (that is to say,) the governor and company of the New River brought from Chadwell and Amwell to London, commonly called "the New River Company"; the company of proprietors of the East London Waterworks; the Southwark and Vauxhall Water Company; the West Middlesex Waterworks Company; the Lambeth Waterworks Company; the governor and company of Chelsea Waterworks; the Grand Junction Waterworks Company; the company of proprietors of the Kent Waterworks; and the Hampstead Waterworks Company; and also any other company, board, commissioner, association, person, or partnership, corporate or unincorporate, for the time being supplying the metropolis or any part thereof with water for domestic use; the expression "the special Act" shall mean and include this Act, and every and any Act of Parliament relating to the company referred to; and the expression "the metropolis" shall mean and include all places described or referred to in the schedule to this Act.

See definition of "metropolis" in the Act of 1871, s. 3, p. 556, and as to the "limits" of that Act, see s. 4, p. 557.

The area of the above Act is extended by the Metropolis Water Act, 1897 (60 & 61 Vict. c. 56), s. 3, which provides that:

Extension to whole water area, and adaptation of Metropolis Water Acts, 15 & 16 Vict. c. 84, 34 & 35 Vict. c. 113.

> "The Metropolis Water Act, 1852, and the Metropolis Water Act, 1871, shall, as respects the metropolitan water companies, extend to the whole of the area within which any of the companies is for the time being authorised to supply water, and for the purpose of the said Acts as so extended reference to that area shall be substituted for references to the 'metropolis' and 'the limits of this Act,' and as respects any area outside the administrative county of London, a reference to the council of a county or county borough shall be substituted for a reference to the metropolitan authority, and so much of the said Acts or of any local Act as is inconsistent with such substitution shall be and is hereby repealed."

The undertakings of the metropolitan water companies have been transferred to the Metropolitan Water Board under the Metropolis Water Act, 1902, *post*, p. 596; see introductory remarks at p. 547, *ante*.

The SCHEDULE above referred to.

All such places lying on the north side or left bank of the river Thames as are within the exterior boundaries of and are within the ambit formed by the parishes of Fulham, Hammersmith, Kensington, Paddington, Hampstead, Hornsey, Tottenham, Saint Pancras, Islington, Stoke Newington, Hackney, Stratford-le-Bow, Bromley, Poplar, and Shadwell.

Such part of the parish of Chelsea as lies north of the said parish of Kensington.

And such parts and places lying on the south side or right bank of the said river as are within the exterior boundaries of and are within the ambit formed by the parishes of Woolwich, Charlton, Greenwich, Deptford, Lee, Lewisham, Camberwell, Lambeth, Streatham, Tooting, Wandsworth, and Putney.

METROPOLIS WATER ACT, 1871.*

(34 & 35 VICT. C. 113.)

An Act to amend the Metropolis Water Act, 1852 ; *and to make further Provision for the due Supply of Water to the Metropolis and certain Places in the Neighbourhood thereof.*

[21st August, 1871.]

The preamble to this Act is repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54).

By the Public Health Act, 1872 (35 & 36 Vict. c. 79), s. 35 (re-enacted by the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 343, and Sched. V., Part III.), the powers and duties of the Board of Trade under the Metropolis Water Acts, 1852 and 1871, shall be exercisable and performed by the Local Government Board; and the "Local Government Board" shall be deemed to be substituted for the "Board of Trade" wherever the latter expression occurs in the said Acts. In the print of the Act which follows this alteration has been made.

PRELIMINARY.

1. This Act may be cited for all purposes as "The Metropolis Water Act, 1871." Short title.

2. This Act and the Metropolis Water Act, 1852, as the same is amended by this Act, shall be read and construed together as one Act. This and recited Act to be as one.

3. In this Act,— Interpretation of terms.

The expression "the metropolis" shall mean the metropolis as defined by the Metropolis Management Act, 1855 † :

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* See introductory remarks at p. 547, *ante*, as to the superseding of the metropolitan water companies referred to throughout this Act by the Metropolitan Water Board.

† See s. 250 of that Act. By s. 4 of the Act in the text, the limits are made co-extensive with those of the Act of 1852. By the Metropolis Water Act, 1897 (60 & 61 Vict. c. 56), s. 3, the area of the Metropolis Water Acts is extended. See note to s. 4.

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The term "company" shall mean and include any of the companies following; (that is to say,)—

The governor and company of the New River brought from Chadwell and Amwell to London, commonly called "The New River Company";

The East London Waterworks;

The Southwark and Vauxhall Water Company;

The company of proprietors of the West Middlesex Waterworks Company;

The company of proprietors of Lambeth Waterworks;

The governor and company of Chelsea Waterworks;

The Grand Junction Waterworks Company;

The company of proprietors of the Kent Waterworks; and also any other corporation, company, board, commissioners, association, person, persons, or partnership, for the time being supplying water for domestic use within the limits of this Act:

The term "person" shall include a corporation aggregate or sole:

The expression "water limits" in relation to a company shall mean such parts of the limits within which such company is authorised to supply water as are within the limits of this Act:

The expression "the special Act" in relation to a company shall mean and include every and any Act of Parliament relating to such company:

The expression "metropolitan authority" shall mean, in the places specified in the table in the Schedule (A.) to this Act annexed, the bodies or persons named in the same table:

See notes to the schedule, *post*, p. 573.

The term "district" shall mean the area selected for the purpose of constant supply, such area being within the jurisdiction of a metropolitan authority, and also within the water limits of a company, and being coterminous with some one or more services of such company:

The term "premises" shall mean and include any dwelling-house and any part of a dwelling-house, and any stable, yard, or other offices used together or in connection with any dwelling-house or any part of a dwelling-house:

The term "prescribed" shall mean prescribed by any regulations made under the authority of this Act:

The definition of "court of summary jurisdiction" which originally occurred here is repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54). See now the definition contained in the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 13 (11).

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The term "fittings" includes communication pipes, and also all pipes, cocks, cisterns, and other apparatus used or intended for supply of water by a company to a consumer, and for that purpose placed in or about the premises of the consumer:

The term "owner" means the person who, for the time being, receives the rack-rent of the premises with reference to which that term is used, whether on his own account or under or by virtue of any mortgage or charge, or as agent or trustee for any person, or who would so receive the same if the premises were let at a rack-rent, and includes every successive owner from time to time of the premises, being such for any part of the time during which the enactment wherein that term is used operates in relation to the premises:

Premises shall be deemed to be on the same service, or on a service when water is supplied to them by a company from the same service pipe.

Limits of Act.

4. The limits within which the provisions of this Act shall be in force and have effect (in this Act referred to as "the limits of this Act") shall include the metropolis and the several places set out in the schedule to the Metropolis Water Act, 1852, which do not form part of the metropolis.

Extension to whole water area, and adaptation of Metropolis Water Acts, 15 & 16 Vict. c. 84, 34 & 35 Vict. c. 113.

The limits of the Metropolis Water Acts have been extended by the Metropolis Water Act, 1897 (60 & 61 Vict. c. 56), s. 3. That section provides that:

> "The Metropolis Water Act, 1852, and the Metropolis Water Act, 1871, shall, as respects the metropolitan water companies, extend to the whole of the area within which any of the companies is for the time being authorised to supply water, and for the purpose of the said Acts, as so extended reference to that area shall be substituted for references to 'the metropolis' and 'the limits of this Act,' and as respects any area outside the administrative county of London a reference to the council of a county or county borough shall be substituted for a reference to the metropolitan authority, and so much of the said Acts or of any local Act as is inconsistent with such substitution shall be and is hereby repealed."

By the East Ham Improvement Act, 1898 (61 & 62 Vict. c. cxxiv.), s. 51, it is provided that—

> "The provisions of the Metropolis Water Acts of 1852 and 1871 relating to a constant supply shall apply within the East London Water Company's limits for the supply of water so far as the same are within the district of the council as if that district had been included within the limits prescribed by section four of the Act of 1871 provided that for the purpose of any application under the said Acts the council shall be deemed to be the metropolitan authority in those provisions mentioned."

A similar provision occurs in the Leyton Urban District Council Act, 1898 (61 & 62 Vict. c. clxxv.), s. 56.

Repeal of parts of Metropolis Water Act, 1852.

5. [*From and after the passing of this Act, the sections of the Metropolis Water Act,* 1852, *specified in the Schedule* (*B.*) *to this Act annexed, shall be and the same are hereby repealed, so far as regards*

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their operation within the limits of this Act: Provided always, that no such repeal shall affect any act, matter, or thing duly done or agreed upon before the passing of this Act, under the authority of any of the sections of the said Act hereby repealed.]

This section is repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict, c. 39).

Supply of water on Sundays.

6. Every company shall on Sundays as on other days supply sufficient pure and wholesome water for the domestic use of the inhabitants within their water limits.

Certain words omitted from this section are repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54).

CONSTANT SUPPLY.

Companies to provide constant supply of water.

7. Subject to the provisions of this Act, every company may, and every company shall, when required so to do, in the manner directed by this Act, provide and keep throughout their water limits, or throughout such parts of such limits as they may be required in manner aforesaid, a constant supply of pure and wholesome water sufficient for the domestic purposes of the inhabitants within such water limits constantly laid on at such pressure as will make such water reach the top story of the highest houses within such water limits (but not exceeding the level prescribed by the special Act) of such company (which supply is in this Act referred to as a "constant supply"); and every such company shall, subject to the provisions of the special Act as the same are amended by this Act, give and continue to give to such inhabitants a constant supply for domestic purposes in manner prescribed.

Sect. 16, *infra*, provides for penalties for the enforcement of this and the following sections.

Certains words omitted from this section are repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54).

Application for constant supply.

8. The metropolitan authority shall, whenever they are of opinion that there should be in any district a constant supply, make application to the company within the water limits in which such district is situate, requiring a constant supply in such district, and any company may without any such application propose to the metropolitan authority to give a constant supply in any district.

Certain words omitted from this section are repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54).

As to "metropolitan authority," see definition in s. 3 and the notes to s. 4, *supra*.

Appeal to Local Government Board.

9. When application has been made to any company requiring such company to provide a constant supply, or when any company has given notice to a metropolitan authority of a proposal to give a constant supply in any district, and the company so required, or the metropolitan authority upon whom notice of such proposal has been served, object to such requisition or proposal, it shall be lawful for

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such company or metropolitan authority, within one month after the making of such application or service of such notice, to present a memorial to the *Local Government Board* setting forth their objections to such requisition or proposal, and the party presenting such memorial, or such company, shall give notice to the other party of the presentation of such memorial, and shall transmit to such party a copy of the same. The *Local Government Board* shall, as soon as conveniently may be after the receipt of such memorial, take the same into their consideration, and may, if they think fit, institute any inquiry in relation thereto, and may hear such company and authority desiring to be heard, and may make such order in reference thereto, and as to the costs thereof and incident to the same, as to them shall seem just.

See note on p. 555, *ante*, as to the Local Government Board.
See definition of "metropolitan authority" in s. 3, *ante*, p. 556.

Restriction as to compulsory supply by companies.

10. No company shall be compelled to give a constant supply to any premises in any district until the regulations * provided for by this Act are made and are in operation within such district, or if it can be shown by such company that at any time after the expiration of two months from the time of the service of any requisition for constant supply more than one fifth of the premises in such district are not provided with the prescribed fittings without prejudice nevertheless to any renewed requisition at a future period.

In any district in which any default in respect of the prescribed fittings shall be found, the metropolitan authority may by notice in writing require the owner or occupier of any such premises, within a time to be specified in such notice, to provide the prescribed fittings, or to cause the fittings in such premises to be repaired, so as to prevent any waste of water, and if any person fail to comply with the terms of such notice the metropolitan authority may provide for such premises the prescribed fittings, or repair the fittings within the same, as the case may be.

The expenses incurred by the metropolitan authority in providing such fittings, or in making such repairs, shall be paid to them by the person liable to pay the rate for the water supplied, or on whose credit the water is supplied, or by the owner of the premises.

All such expenses may be recovered, with costs, from the owner, and to the extent of any rent due by the occupier of the premises, from such occupier, by proceedings in a court of summary jurisdiction, or by action in any court having jurisdiction locally in the matter, as if the same were an ordinary simple contract debt; and any sum and costs so recovered from an occupier may be deducted by him from the rent payable by him to the owner, and shall be allowed by the owner and every other person interested in the rent, as if

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* See these Regulations, *post*, pp. 714 *et seq*.

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the same had been actually paid as rent; but if in any case an occupier fails to disclose the amount of rent due by him, or the name or address of the owner, he shall be liable to pay the full amount of such expenses and costs: Provided further, that as between any such owner and occupier nothing herein contained shall be taken to affect any contract made between them respecting the payment of the expenses of any such works as aforesaid.

Power to Local Government Board to require constant supply in certain cases.

11. It shall be lawful for the *Local Government Board*, at any time, to require a constant supply to be provided in any district by the company within the water limits of which such district is situate, upon complaint made, and in case it appears to such Board, after due inquiry—

That the metropolitan authority refuses to make or unreasonably delays making application for such constant supply, or

That, by reason of the insufficiency of the existing supply of water in such district, or the unwholesomeness of such water in consequence of its being improperly stored, the health of the inhabitants of such district is or is likely to be prejudicially affected.

Certain words omitted from this section are repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54).

See note on p. 555, *ante*, as to the Local Government Board.

Notice requiring or proposing constant supply to be served upon company or metropolitan authority.

12. Where a constant supply is required in any district, notice to that effect shall be served, on behalf of the party requiring the same, upon the company required to provide such supply; and where a constant supply is proposed to be given in any district by any company, notice to that effect shall be served on behalf of such company upon the metropolitan authority. In every such notice shall be stated accurately the district in which such constant supply is required or proposed to be given, and the day (not being an earlier day than four months after the date of the service of such notice) upon and from which such supply is to commence.

Extension of time to companies.

13. Where a constant supply is required in any district, and the company is unable, from want of funds or other cause of any kind, to execute all the necessary works within the time prescribed by this Act, the *Local Government Board*, if they think fit, may extend the time for the giving of such supply generally, or may extend the time, and direct such supply to be given at different times in succession, to the several parts of such district, in such manner as may be found most convenient: Provided that application be made by the company for such extension of time within one month after the notice referred to in the last preceding section has been served upon them.

See note on p. 555, *ante*, as to the Local Government Board.

Provision for supply

14. With respect to cases where a group or number of dwelling-houses are situate in a court or passage, or otherwise in contiguity with or in

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[illegible] — in courts, passages, etc.

close neighbourhood to one another, the following further provisions shall have effect; (that is to say,)—

(1.) If at any times it appears to the *Local Government Board*, on the report of the nuisance authority, as defined by the Sanitary Act, 1866,* that a constant supply cannot be well and effectually provided for that group or number of dwelling-houses, except by means of a stand-pipe or other apparatus placed outside the dwelling-houses, the *Local Government Board* may from time to time make an order to the effect that such group or number of dwelling-houses may be so supplied, and shall serve the same on the company within whose water limits the dwelling-houses are situate:

(2.) If the requisite stand-pipe or other apparatus in accordance with the regulations of the company is provided, then the company shall give to those dwelling-houses a supply accordingly by means of the stand-pipe or other apparatus so provided, and on giving such supply shall be entitled to receive and recover water rates or rents from the owners or occupiers of such dwelling-houses as if the supply had been given in the premises. The expense of providing such stand-pipe or other apparatus shall be borne by the owner of the dwelling-houses, or if there is more than one owner then by the respective owners in such proportions as the *Local Government Board* shall direct:

(3.) The *Local Government Board* may at any time abrogate, wholly or in part, the order, or may originally grant it only for a limited period.

See as to the Local Government Board, note on p. 555, *ante*.

Provision for case of frost, etc.

15. Notwithstanding anything in this Act, a company shall not be subject to any liability for not giving a constant supply if the want of such supply arises from frost, unusual drought, or other unavoidable cause or accident.

See *Campbell* v. *East London Waterworks Co.*, and *Industrial Dwellings Co.* v. *East London Waterworks Co.*, *ante*, p. 489.

Penalties for non-compliance with preceding provisions.

16. Any company which violates, refuses, or neglects to comply with any of the preceding provisions of this Act shall be liable to a penalty not exceeding two hundred pounds, and to a further penalty not exceeding one hundred pounds for every month during which such violation or refusal or neglect to comply with the said provisions continues after they shall have received notice in writing from the *Local Government Board* to discontinue such violation, refusal, or neglect as aforesaid.

See the notes to s. 36 of the Gasworks Clauses Act, 1871, *ante*, p. 241.

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* The Public Health Act, 1875 (38 & 39 Vict. c. 55), left this Act unrepealed so far as the same related to the metropolis. The whole Act, except s. 41, is repealed by the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), (4th schedule). The borough councils created under the London Government Act, 1899 (62 & 63 Vict. c. 14), are now the sanitary authorities.

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Where a metropolitan water company had provided a supply of water for a district under s. 7 of the Metropolis Water Act, 1871, it was held that a private individual could not take proceedings against the company for the penalties imposed by s. 16 for refusing or neglecting "to provide and keep a constant supply of pure and wholesome water sufficient for the domestic purposes of the inhabitants." Such proceedings can only be taken by the metropolitan authority within the jurisdiction of which the penalty has been incurred (*Kyffin* v. *East London Waterworks Co.*, [1896] 1 Q. B. 446). In the above case the notice required by s. 16 had not been given, and it was contended that such notice was necessary and must be proved. This point, however, became immaterial, as the court held that private individuals could not proceed under s. 16. See *per* LINDLEY, L.J., *ibid.*, at p. 449.

As to the Local Government Board, see note on p. 555, *ante.*

REGULATIONS.

Company may make regulations.

17. Every company shall, within six months after the passing of this Act, make regulations for the purposes for which regulations may be made under the authority of section 26 of the Metropolis Water Act, 1852, and the provisions of that section shall apply also to the preventing of undue consumption or contamination of water.

As to these Regulations, see *post*, pp. 714 *et seq.*, and see *Kyffin* v. *Metropolitan Water Board*, cited *ante*, at p. 543.

By the London Government Act, 1899 (62 & 63 Vict. c. 14), s. 5 (2), and Second Schedule, Part II., the powers of the London County Council under ss. 17—25, inclusive, of the Metropolis Water Act, 1871, subject to the conditions mentioned in that Schedule, may be exercised also by each borough council as respects their borough.

Amendment of regulations.

18. Any company, if it thinks fit, or if requested so to do by the *Local Government Board*, may repeal or alter any of the regulations made for the purposes aforesaid, or make new regulations instead of any of the same.

As to the Local Government Board, see note on p. 555, *ante.*

In case of default by companies, Local Government Board may appoint person to report as to regulations, and may make same.

19. In case any company does not make regulations within the time specified in this Act, or in case any company, on being requested in writing by the metropolitan authority, or by any ten consumers of the water supplied by that company, to repeal or alter any of the regulations for the time being in force, or to make new regulations instead of any of the same, refuses so to do, the *Local Government Board* may, if they think fit, appoint a competent and impartial person of engineering knowledge and experience to report to them as to such regulations as may be necessary for the execution of this Act, or as to the expediency of altering or repealing such regulations, or of making new regulations, in conformity with such request as aforesaid, and on the report of such person the *Local Government Board* may make such regulations, repeal, or alterations as they think fit.

As to the Local Government Board, see note on p. 555, *ante.*

Penalties for offences against regulations.

20. By any regulations made, under the authority of the Metropolis Water Act, 1852, or of this Act, penalties may be imposed for offences against the same not exceeding in respect of any offence the sum of five pounds, so that every such regulation be so framed as to allow part only of the maximum penalty being inflicted, and any such penalty shall be recoverable as penalties under this Act are recoverable.

Notice of regulations to be delivered to metropolitan authority.

21. Within four days after the making of any regulation, or of any repeal of or alteration in any regulation, notice of the same shall be served upon the metropolitan authority by the company or person making the same.

Confirmation of regulations.

22. No regulation, and no repeal or alteration of any regulation, made under the authority of the Metropolis Water Act, 1852, or of this Act, by a company, shall be of any force or effect unless and until the same be submitted to and confirmed by the *Local Government Board*, who may institute such inquiry in relation thereto as they shall think fit, and who at such inquiry shall hear the metropolitan authority, and the company, if desiring to be heard, and the said board shall, if they think fit, or if requested, nominate and have present at such inquiry to advise and assist them a competent and impartial waterworks engineer. The *Local Government Board* may, after such inquiry, confirm or disallow any such regulation, repeal, or alteration, in whole or in part, or may confirm the same with such modification or alteration as they may think proper; and no such regulation, repeal, or alteration shall be made by the *Local Government Board* on any such report as aforesaid, except after a like inquiry and hearing, with the like advice and assistance as aforesaid: Provided that no such regulation, repeal, or alteration shall be confirmed or made (as the case may be) by the *Local Government Board* unless notice in that behalf shall have been given by the company to which the same relates, or by such person as the *Local Government Board* direct, in the London Gazette and in two daily morning newspapers circulated within the limits of this Act, one month at least before the inquiry; and one month at least before any such inquiry is held a copy of the regulation, repeal or alteration in question shall be sent by such company or person to the office of the metropolitan authority, and the same shall for one month be kept open during office hours at the respective offices of the metropolitan authority and of the said company to the inspection of all persons, without fee or reward, and a copy of the same or of any part thereof shall be furnished to every person who shall apply for the same, on payment of sixpence for every one hundred words contained in such copy.

See note on p. 555, *ante*, as to the Local Government Board.

Publication of regulations.

23. A printed copy of all regulations in force for the time being shall be kept at the office of the metropolitan authority and of every company within the limits of this Act, and all persons may at all reasonable times inspect such copy without payment, and each company shall cause to be delivered a printed copy, authenticated by their seal, of all regulations for the time being in force, to every person applying for the same, on payment of any sum not exceeding one shilling and sixpence for every such copy, and a printed copy of the regulations for the time being in force relative to any particular district only to every person applying for the same, on payment of any sum not exceeding threepence for every such copy.

Regulations to be binding upon all parties.

24. All regulations, and every repeal of or alteration in any regulation made, shall, after publication in manner by the last preceding section of this Act directed, be binding upon and be observed by all parties, and shall be sufficient warrant for all persons acting under the same, and a company shall not be bound under any agreement to supply or continue to supply water to any premises unless such regulations as are for the time being in force are duly observed in respect of those premises.

Evidence of regulations.

25. A printed copy of regulations relating to any company, dated and purporting to be made as aforesaid, and to be authenticated by the seal of such company, shall be conclusive evidence of the existence and of the due making, confirmation, and publication of such regulations in all prosecutions or proceedings under the same, without adducing proof of such seals, or of the fact of such confirmation or publication of such regulations or of any of the requirements of this Act relative thereto having been complied with.

See the note to s. 17 as to the concurrent powers of borough councils under ss. 17—25 inclusive.

SUPPLY OF PRESCRIBED FITTINGS.

Notice relating to constant supply to be published in London Gazette, etc.

26. When notice in relation to a constant supply in any district has been served upon or by any company, the party by whom or on whose behalf such notice shall be served shall, within five days after the service thereof, cause to be published a copy of the same once in the London Gazette, and copies of the same once at least in each of two successive weeks in any two daily newspapers circulated within the limits of this Act.

Company may issue notice upon owners and occupiers to provide prescribed fittings.

27. Where in any district any company is required or has proposed to provide a constant supply, such company may, at any time after the expiration of one month after the publication in the London Gazette of a copy of the notice requiring or proposing such constant supply, unless a memorial or application has been presented or made to the *Local Government Board* objecting to such constant supply or seeking an extension of time; and if any such memorial or application has been presented or made, then at such time after the determination of the *Local Government Board* in relation to such memorial or application as such board shall approve and order, cause to be served on the owner or occupier of any premises within such district a notice requiring such owner or occupier to supply such premises with the prescribed fittings.

See note on p. 555, *ante*, as to the Local Government Board.

An occupier of premises, provided with a constant supply of water by the Metropolitan Water Board, was summoned for hindering an officer of the Board from entering and inspecting the prescribed fittings, contrary to the Metropolis Water Act, 1871. There was no evidence that a notice to provide and keep in repair the prescribed fittings was ever served on the owner or occupier under s. 27 of the Act, and there was no evidence of the regulations prescribing the fittings. It was held that notice under s. 27 was not a condition precedent to the right of the officer of the Board, under s. 30, to enter and inspect the prescribed fittings, but that as there was no evidence of the regulations the summons was rightly dismissed (*Metropolitan Water Board* v. *Northcott* (1907), 71 J. P. 338).

Owner or occupier to provide prescribed fittings.

28. Every owner or occupier of premises upon whom notice to that effect has been served shall, within two months after the date of the service of such notice, provide the prescribed fittings, and shall from time to time keep the same in proper repair.

"Fittings" includes communication pipes (s. 3). See s. 32 imposing penalties and giving power to cut off supply for non-compliance with provisions of the Act. A water company finding indications of a leak in a communication pipe (belonging to the consumer) in a public street repairable by the local authority, opened the ground and found a leak in the leaden communication pipe leading to a stable with a dwelling-house above occupied by two grooms in the respondent's (the consumer's) service. The company immediately gave notice in writing to the respondent, requiring him to repair the same, and stating that the company would fill in and make good the ground upon payment of the expenses incurred. The repair not having been done, the company cut off the supply, whereupon they were summoned for a penalty under s. 43 of the Waterworks Clauses Act, 1847, for "neglecting or refusing" to furnish a supply of water The magistrate convicted, imposing a penalty of six pounds, being forty shillings a day for three days, and awarded twelve guineas costs. On a case stated, it was held by the divisional court that the conviction was wrong, and that the case was to be distinguished from *Chapman* v. *Fylde Waterworks Co.* (*ante*, p. 484), in which case the Court of Appeal held that, although the owner or occupier may lawfully open the streets for the purpose of laying the communication pipe originally, he had no power to open the streets for the purpose of repairs; and that that power was solely vested in the water undertakers, because in the present case it was not necessary for the respondent to break up the streets because that had been already done by the water company (*Grand Junction Waterworks Co.* v. *Rodocanachi*, [1904] 2 K. B. 230).

In case of default by owner or occupier, company may provide or repair prescribed fittings.

29. Where in any district any company is required or has proposed to provide a constant supply, and

Any owner or occupier of premises upon whom notice to provide prescribed fittings has been served by such company makes default in providing the prescribed fittings, such company, if they think fit, may provide such fittings; or

Where in any such district the fittings of any person are out of order, and not as prescribed, such company may, by notice in writing, require such person, within twenty-four hours after the date of the service of such notice, to cause the same to be repaired, so as to prevent any waste of water; and if any person fail to comply with the terms of such notice, such company (if they think fit) may repair the fittings of such person.

The expenses incurred by such company in providing such fittings, or in making such repairs, shall be paid to them by the person liable to pay the rate for the water supplied, or on whose credit the water is supplied by means of such fittings, or by the owner of the premises.

All such expenses may be recovered, with costs, from the owner, and to the extent of any rent due by the occupier of the premises from such occupier, by proceedings in a court of summary jurisdiction, or by action

Sect. 29. in any court having jurisdiction locally in the matter, as if the same were an ordinary simple contract debt; and any sum and costs so recovered from an occupier may be deducted by him from the rent payable by him to the owner, and shall be allowed by the owner and every other person interested in the rent, as if the same had been actually paid as rent; but if in any case an occupier fails to disclose the amount of rent due by him, or the name or address of the owner, he shall be liable to pay the whole amount of such expenses and costs: Provided, that as between any such owner and occupier nothing herein contained shall be taken to affect any contract made between them respecting the payment of the expenses of any such works as aforesaid.

Power to enter premises for inspection and repair of fittings.

30. Where in any district any company is required or has proposed to provide a constant supply, the officers or agents of such company, or of the party requiring such supply, or any person appointed for such purpose by the *Local Government Board* may, at all reasonable times, enter any premises within such district, in order to inspect the premises for the purposes of this Act, and examine the same with a view to ascertain whether there are in or about the same the prescribed fittings, or, where authorised under the provisions of this Act, to provide or repair the fittings; and if any person hinder any such officer, agent, or person from entering and making such inspection or examination, or providing or repairing such fittings, each person so offending shall for every such offence be liable to a penalty not exceeding five pounds.

See note on p. 555, *ante*, as to the Local Government Board. See also *Metropolitan Water Board* v. *Northcott*, cited at length at p. 565, *ante.*

Settlement of disputes as to sufficiency, etc., of fittings.

31. In the event of any dispute as to whether the fittings of any person are as prescribed, such dispute shall be settled by the court of summary jurisdiction, on the application of either party, which court may make such order as to the amount of the costs of the proceedings before such court as seems just, and the decision of such court shall be final and binding on all parties.

Penalties for non-compliance with the provisions of Act.

32. Where in any district any company is required or has proposed to provide a constant supply—

If any person supplied with water by such company wilfully or negligently causes or suffers any fittings to be out of repair, or to be so used or contrived as that the water supplied to him by such company is or is likely to be wasted, misused, unduly consumed, or contaminated, or so as to occasion or allow the return of foul air or other noisome or impure matter into any pipe belonging to or connected with the pipes of such company, he shall for every such offence be liable to a penalty not exceeding five pounds; or

If any person supplied with water by such company wrongfully does or causes or permits to be done anything in contravention of any of the provisions of the special Act or this Act, or wrongfully fails to do anything which, under any of those provisions, ought to be done for the prevention of the waste, misuse, undue consumption or contamination of the water of such company, they may (without prejudice to any remedy against him in respect thereof) cut off any of the pipes by or through which water is supplied by them to him or for his use, and may cease to supply him with water, so long as the cause of injury remains or is not remedied; and in every case of so cutting off or ceasing to supply, the company shall within twenty-four hours thereafter give to the nuisance authority, as defined by the Sanitary Act, 1866, notice thereof.

See now s. 49 of the Public Health (London) Act, 1891, set out *ante*, p. 518. For definition in that Act of nuisance authority, see s. 99.

See as to cutting off supply on failure to repair a communication pipe, *Grand Junction Waterworks Co.* v. *Rodocanachi*, [1904] 2 K. B. 230, which is cited at length under s. 28 *ante*, p. 565.

Absence of proper water fittings in premises to be a nuisance.

33. The absence in respect of any premises of the prescribed fittings after the prescribed time shall be a nuisance, within sections 11 and sections 12—19 (inclusive) of the Nuisances Removal Act for England, 1855, and within all provisions of the same or any other Act applying, amending, or otherwise relating to those sections; and that nuisance, if in any case proved to exist, shall be presumed to be such as to render the premises unfit for human habitation within section 13 of the Nuisances Removal Act for England, 1855, unless and until the contrary is shown to the satisfaction of the justices acting under that section.

The Nuisances Removal Act was repealed by the Public Health Act, 1875, except so far as related to the metropolis. By the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), the whole Act is repealed, and new provisions in its place are made.

Absence of water fittings a nuisance.

By s. 2 (1) (*f*) of the Act of 1891, it is enacted that " any such absence from premises of water fittings as is a nuisance by virtue of s. 33 of the Metropolis Water Act, 1871, set out in the first schedule to this Act," shall be a nuisance liable to be dealt with summarily under the Act of 1891.

Sect. 48 of the Act of 1891 further provides that (1) An occupied house without a proper and sufficient supply of water shall be a nuisance liable to be dealt with summarily under that Act, and, if it is a dwelling-house, shall be deemed unfit for human habitation. (2) A house which after the commencement of this Act is newly erected, or is pulled down to or below the ground floor and rebuilt, shall not be occupied as a dwelling-house until the sanitary authority have certified that it has a proper and sufficient supply of water, either from a water company, or by some other means. (3) If the sanitary authority refuse such certificate, or fail to give it within one month after written request for the same from the owner of the house, the owner of the house may apply to a petty sessional court, and that court, after hearing or giving the sanitary authority an opportunity to be heard, may, if they think the certificate ought to have been granted, make an order authorising the occupation of the house; but, unless such order is made, an owner who occupies or permits to be occupied, the house as a dwelling-house without such certificate shall be liable to a fine not exceeding ten pounds, and to a fine not exceeding twenty shillings for every day during which it is so occupied until a proper and sufficient supply of water is provided; but the imposition of such fine shall be without prejudice to any proceedings for obtaining a closing order. Notice of the cutting off of supply must be given to the sanitary authority within twenty-four hours (s. 49). Every sanitary authority shall make byelaws for securing the cleanliness and freedom from

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pollution of tanks, cisterns, and other receptacles used for storing of water, used or likely to be used by man for drinking or domestic purposes, or for manufacturing drink for the use of man (s. 50). All existing public cisterns, reservoirs, wells, fountains, pumps, and works used for the gratuitous supply of water to the inhabitants are vested in the sanitary authority with wide powers (s. 51). Penalties for fouling water are imposed (ss. 52—54).

The following case decided under this Act might be referred to: The appellants, who were possessed for a term of years of a house and premises in Blackfriars Road, let them to one J. B., with a covenant by J. B. not to sublet without their consent. J. B., without their consent, sublet each floor to a separate tenant. The water supply of the house would have been sufficient if it had been in the occupation of one tenant, but the only water supply available for the tenant of the top floor was that provided by a tap in the yard. It was held that no order could be made against the appellants as owners under s. 48 to abate the nuisance of there being an insufficient supply for the top floor, since it could not be treated as an occupied house for the purposes of s. 48, as the words "occupied house" mean a "structure as let," and since even if it could be so treated the appellants, not being in receipt of the rack-rent, were not owners within the Act (*Field & Sons* v. *Southwark Borough Council* (1907), 71 J. P. 240).

Obligation to provide water-closets, etc.

The Act of 1891 further provides, s. 37—

> (1) It shall not be lawful newly to erect any house or to rebuild any house pulled down to or below the ground floor without a sufficient ash-pit furnished with proper doors and coverings, and one or more proper and sufficient water-closets according as circumstances may require, furnished with suitable water supply and water supply apparatus, and with suitable trapped soil-pan and other suitable works and arrangements, so far as may be necessary to ensure the efficient operation thereof.
>
> (2) If any person offends against the foregoing enactment of this section he shall be liable to a fine not exceeding twenty pounds.

Further sub-sections enable the sanitary authority to enforce the foregoing provisions.

The decision of the sanitary authority acting under s. 37 of the Act of 1891 that a house is not furnished with proper and sufficient water-closet accommodation, is final, subject only to an appeal under sub-s. (5) to the county council. Where, therefore, the owner or occupier of a house is summoned for non-compliance with a notice of the sanitary authority to provide such accommodation, a magistrate has no jurisdiction to reverse the decision of the sanitary authority and to hold that the accommodation is not required (*Vestry of St. John's, Hackney* v. *Hutton*, [1897] 1 Q. B. 210). As to whether the cost is to be borne by a lessor or lessee upon the construction of a particular covenant in the lease, see *Foulger* v. *Arding*, [1902] 1 K. B. 700.

For similar sanitary provisions relating to places outside the metropolis, see the Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 35 *et seq.* See also *Wood* v. *Widnes Corporation*, [1898] 1 Q. B. 463, and *Nicholl* v. *Epping U. D. C.*, [1899] 1 Ch. 844.

In proceedings at the instance of the Woolwich Metropolitan Borough Council the magistrate decided that, in the case of a tenement house, the supply of water from a tap in the yard was not a proper and sufficient supply within the meaning of s. 48 of the Public Health (London) Act, 1891, and an order on the defendant to abate the nuisance was made with costs (see Jl. of G. L., March 21st, 1905, p. 792).

Provision respecting fire-plugs.

34. Section 32 of the Metropolitan Fire Brigade Act, 1865, shall operate, subject and according to the provisions following; (that is to say,)

(1.) In that section and in this provision the term "fire-plug" and the term "plug" shall include hydrant and all other apparatus necessary or proper in connection with the company's pipes for supply of water in case of fire : **Sect. 34.**

(2.) Where a company give a constant supply in any part of their water limits they may, if they think fit, give notice thereof to the Metropolitan Board of Works.

(3.) If the Metropolitan Board of Works do not within two months after receipt of any such notice specify, as regards that part of the company's water limits, what plugs for supply of water in case of fire, at what places, of what dimensions, and in what form they require the company to provide, then, at any time after the expiration of that time, the company may, if they think fit, provide in and for that part of their water limits such plugs for supply of water in case of fire, at such places, of such dimensions, and in such form as to the company seem necessary or proper.

(4.) Thereupon, as regards that part of the company's water limits the company shall be deemed to have fully discharged all obligations imposed on them by the said section 32 :

(5.) All plugs provided by a company in pursuance of this provision may, for the purposes of the Fire Brigade, be used as if they had been provided on the requisition of the Metropolitan Board of Works under the said section 32 :

(6.) The providing of plugs by a company under this provision shall be at the expense of the Metropolitan Board of Works, and the costs, charges, and expenses of the company in or about the providing of the same shall be paid to the company by the Metropolitan Board of Works on demand, out of their general rate, and in default may be sued for and recovered, with costs, by the company in any court of competent jurisdiction for the recovery of any ordinary simple contract debt of the like amount.

As to fire-plugs generally, see *ante*, pp. 479 *et seq.*, where the cases as to fire-plugs, including those in the metropolis, are collected.

By s. 32 of the Metropolitan Fire Brigade Act, 1865 (28 & 29 Vict. c. 90), the powers then exercised by any local body or officer within the metropolis as respects fire-plugs were thenceforth transferred to the Metropolitan Board of Works. By s. 40 (8) of the Local Goverment Act, 1888 (51 & 52 Vict. c. 41), the powers, duties, and liabilities of that Board were transferred to the London County Council. See *Carter* v. *Thomas*, cited, *ante*, p. 487.

Hydrants, fire-plugs, and other apparatus provided by a metropolitan waterworks company pursuant to the Metropolitan Fire Brigade Act, 1865, s. 32, and the Metropolis Water Act, 1871, s. 34, for supply of water in case of fire, may be used by the waterworks company, now the Metropolitan Water Board, for purposes other than the supply of water for extinguishing fires, cleansing sewers and drains, cleansing and watering streets, or supplying public pumps, baths, and washhouses without the consent of the London County Council, and may, by permission of the company, now the Metropolitan Water Board, be used by persons other than the company [water board] (*London C. C.* v. *East London Waterworks Co.*, [1900] 1 Q. B. 330).

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By the London County Council (General Powers) Act, 1894 (57 & 58 Vict. c. ccxii.), s. 4, power is conferred on the London County Council to enter into and carry into effect any agreement with the companies supplying water in London, and the vestries and district boards of works in London, or any of them respectively, with respect to the use of fire hydrants for flushing and other purposes: provided that no agreement with respect to any hydrant shall be valid unless the company owning the main or pipe with which the hydrant is connected, and the local authority (if any) to whom the hydrant belongs shall be a party thereto. The metropolitan borough councils now take the place of the vestries and district boards of works. See London Government Act, 1899 (62 & 63 Vict. c. 14).

QUALITY OF WATER.

Power to Board to appoint persons to inquire and report as to quality of water.

35. The *Local Government Board* may at any time, if and when they think fit, appoint a competent person to inquire into and report on the quality of the water furnished by any company, notwithstanding that no complaint has been made and signed by twenty inhabitant householders, as prescribed by section 9 of the Metropolis Water Act, 1852; and sections 10 and 11 and 13, and the other provisions of that Act, shall apply in every respect as if such person were appointed under section 9 of that Act, and as if any matter reported to the *Local Government Board* as requiring alteration on the part of a company had been the subject of a complaint by such householders as aforesaid.

See s. 9 of the Act of 1852 and notes thereto, *ante*, p. 550.

See note on p. 555, *ante*, as to the Local Government Board.

Appointment and duties of water examiner.

36. There shall be a water examiner, being a competent and impartial person, from time to time appointed by and removable by the *Local Government Board*, who shall from time to time, in such manner as the *Local Government Board* direct, examine the water supplied by any company, in order to ascertain whether or not the company have complied with the requirements of section 4 of the Metropolis Water Act, 1852, and shall from time to time report the results of his several examinations to the *Local Government Board*; and the *Local Government Board* shall send a copy of every such report to the company to which the same relates, and the company may, if they think fit, on each occasion of such examination, be represented thereat by some officer, but such officer shall not interfere in the examination.

There shall be paid to such water examiner such remuneration by the companies and in such proportions as such board appoints.

See *ante*, p. 549.

See note on p. 555, *ante*, as to the Local Government Board.

ACCOUNTS.

[37—42]. These sections were repealed by s. 38 and the 5th Schedule of the Metropolitan Water Act, 1902. Such of the sections as related to the auditor and the audit of the accounts of the companies were by s. 40 (2) of the Act of 1902, kept temporarily alive for the purposes of that section, but such purposes are now spent.]

ARBITRATION.

Disputes may be settled by arbitration.

43. Where any dispute arises between any persons whatsoever in relation to the execution of this Act, or to any Act, matter, or thing incident to or consequent upon the execution of the same, and where the method of determining any such question in dispute is not expressly provided for, such question may, if the parties so desire, be settled by arbitration in manner prescribed by the Companies Clauses Consolidation Act, 1845, with respect to the settlement of disputes by arbitration.

See *post*, ss. 128 *et seq.* of the Companies Clauses Act, 1845 (8 & 9 Vict. c. 16); and see Arbitration Act, 1889 (52 & 53 Vict. c. 49, s. 24).

PENALTIES.

Recovery and application of penalties.

44. Every penalty incurred by any company by reason of non-compliance with any of the provisions of this Act shall go and belong to the metropolitan authority within the jurisdiction of which the same has been incurred, and may be sued for and recovered by such metropolitan authority in any court of competent jurisdiction for the recovery of any ordinary simple contract debt of the like amount, and shall be paid and applied as such metropolitan authority shall from time to time direct.

Every such penalty shall be borne and paid (to the satisfaction of the auditor appointed as in this Act provided) exclusively by and out of the divisible profits of the company by whom the penalty is incurred, and by way of reduction of dividend.

Summary proceedings for penalties, etc.

45. Except as is by the next preceding section expressly provided, all penalties under this Act may be sued for and recovered in the Court of Summary Jurisdiction.

MISCELLANEOUS.

Form and service, etc., of instruments.

46. Any instrument (including a notice, order, resolution, declaration, requisition, consent, approval, disapproval, or other document) made, given, delivered, or served under this Act, or any regulation thereunder, [*may be either in print or in writing* (*including lithograph*), *or partly in print and partly in writing* (*including lithograph*), *and*,] if the instrument of a company, shall be sufficiently authenticated by the name of their secretary being affixed thereto in [*print or*] writing, or by a stamp on behalf of the company; and it shall be sufficient in all cases where any such instrument is required to be given to or served on the owner or occupier of any premises to address it to such owner or occupier by his description as owner or occupier (as the case may be) of the premises (naming them) in respect of which it is given or served without further name or description; and any such instrument may be addressed to owners or occupiers of any number of contiguous or neighbouring premises collectively, and when so addressed may be served on more owners and occupiers than one (so that separate copies be served on the

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respective owners and occupiers of the several premises concerned); and any such instrument may be served on any owner, occupier, or other person either personally or by sending the same through the post in a letter addressed to him by name at his last known place of abode or business, or by delivering the same to some inmate at his last known or usual place of abode or business, or in case of an occupier to any inmate of the premises in respect of which it is given or served, or if the premises are unoccupied, and the place of abode of the person to be served is, after diligent inquiry, unknown, it shall be sufficient to affix it, or a copy thereof, on some conspicuous part of such premises.

The words in italics are repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54). See Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 266; Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 99; and Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 20.

Act not to apply to certain property and accounts of New River Company.

47. Nothing in this Act shall be deemed to apply to any of the landed estate, houses, or property of the New River Company not directly used for or connected with their water supply. . . .

The remainder of this section was repealed by s. 38 and the 5th Schedule of the Metropolis Water Act, 1902.

Incoming tenant not to pay arrears of outgoing tenant, unless by express agreement.

48. In case any consumer leave the premises where water was supplied to him without paying to the company the rate due from him, the company shall not require from the next tenant of the premises payment of the arrears so left unpaid, unless the incoming tenant agreed with the defaulting consumer to pay the arrears, but the company shall notwithstanding any such arrears, supply water to the incoming tenant, on being required by him so to do.

See cases collected in the notes to s. 11 of the Gasworks Clauses Act, 1871, at pp. 223 *et seq.*, *ante.*

Amendment of ss. 17 and 18 of Metropolis Water Act, 1852.

49. Sections 17 and 18 of the Metropolis Water Act, 1852, shall be read as if instead of the words "district mains" and "district main" in the said sections the words "pipes" and "pipe" were substituted respectively; and every company shall, upon the map, and upon every alteration of the same made in conformity with the provisions of the said section 17, as amended by this section, cause to be marked every screw-cock or apparatus by means of which water is permitted to flow or is prevented from flowing from the main into any pipe within the water limits of such company.

See p. 552.

Saving for ordinary powers.

50. Except as in this Act provided, nothing in this Act shall take away, abridge, or prejudicially affect any right or power which a company would have had under their special Act or the Metropolis Water Act, 1852, or under any charter or otherwise, if this Act had not been passed.

Expenses of Act.

51. [*Repealed by the Statute Law Revision Act,* 1883 (46 & 47 Vict. c. 39).]

SCHEDULE A.

Sched. A.

Places.	Description of Metropolitan Authority.
The City of London and the liberties thereof	The mayor, aldermen, and commons of the City of London.
The metropolis, except the City of London and the liberties thereof.	The Metropolitan Board of Works (*a*).
Any place within the limits of this Act not included in the above descriptions, and under the jurisdiction of commissioners, trustees, or other persons intrusted by any Local Act with powers of improving, cleansing, or paving such place.	The commissioners, trustees, or other persons intrusted by the Local Act with powers of improving, cleansing, or paving.
Any place within the limits of this Act not included in the above descriptions, and within the jurisdiction of local boards constituted in pursuance of the Public Health Act, 1848, and the Local Government Act, 1858, or one of such Acts (*b*).	The local board (*b*).
Any place or parish within the limits of this Act not within the above descriptions, and in which a rate is levied for the maintenance of the poor.	The vestry, select vestry, or other body of persons acting by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry (*c*).

(*a*) The duties of the Metropolitan Board of Works are now transferred to the London County Council by the Local Government Act, 1888, s. 40 (8). By the London Government Act, 1899, which puts an end to the vestries and creates metropolitan borough councils within the area of the administrative county of London, it is provided by s. 5 (2), and Schedule 2, Part II., that the powers under ss. 17—25 of the Metropolis Water Act, 1871, with respect to regulations of water companies may be exercised by the borough councils, but only with respect to a water company supplying any part of the borough.

(*b*) The Public Health Act, 1875, repealed these Acts, and took their place (see ss. 313, 325, and 343). By the Local Government Act, 1894, s. 21, it is provided that urban sanitary authorities shall be called urban district councils, and their districts urban districts.

(*c*) See note (*a*) above.

NOTE.—*Schedules B. and C. of this Act were repealed by the Statute Law Revision Act of* 1883 (46 & 47 Vict. c. 39). *They were referred to in the repealed parts of ss.* 5 *and* 39 *respectively of the Act of* 1871.

FORM OF WORKING STATEMENT OF WATERWORKS UNDERTAKING.

Forms of accounts.

The following specimen form of working statement has been kindly supplied by Messrs. Wood, Drew & Co., chartered accountants. As to the object and advantages of an annual working statement, see *ante*, p. 258.

SPECIMEN FORM OF WORKING STATEMENT IN ACCORDANCE WITH WOOD DREW & CO.'S "ANALYSIS OF THE ACCOUNTS OF SOME OF THE PRINCIPAL WATER UNDERTAKINGS OF THE UNITED KINGDOM."

Waterworks Undertaking of the .

Working Statement for the year ending .

Quantity of water supplied—		
Unmeasured supplies (including leakage)		gallons
Measured supplies		gallons
Bulk supplies		gallons
Total		gallons
Supplied in district for all purposes		gallons
Average daily supply		gallons
Estimated population supplied (exclusive of districts supplied in bulk)...		
Average daily supply per head		gallons
Approximate number of supplies		

Water rental (including public water rate)—

	Amount.	Per Million Gallons.	Per 1,000 Gallons.
	£	£	*Pence.*
Unmeasured supplies			
Measured supplies			
Bulk supplies			
Public rate		—	—
Total			

General Notes.—Supplied in district for all purposes: Total quantity supplied less quantity supplied in bulk.

Approximate number of supplies: Excluding fire-plugs and shipping and building supplies.

Water rental: Net rental after deduction of empties and bad debts.

Public rate: Including a deficiency made good out of the rates.

For the calculations per million gallons and per thousand gallons the total quantity of water supplied should be used.

WORKING STATEMENT FOR WATER UNDERTAKINGS—*continued.*

Form.

		Amount.	Per Million Gallons.	Per 1,000 Gallons.	Per Supply.	Per cent. on Rental.
		£	£	*Pence.*	£	
Maintenance of reservoirs, wells, aqueducts, and other expenses of obtaining and storing water						
Pumping, including coal, wages and engine repairs						
Filtration, including wages and materials						
Maintenance of mains, meters, etc., inspection and other expenses of distribution						
Salaries of engineers and assistants ...						
Rents, wayleaves and easements						
Purchase of water in bulk						
Rates and taxes						
Management and collection, including salaries, stationery and office expenses						
Law and parliamentary charges						
Sundries						
Total working expenses						
Water rental, including public water rate						100·0
Profit on water						
Net rents of houses, lands and mills						
Profit on plumbing and fittings						
Interest received						
Less income tax (balance of account)						
Total available to meet loan charges						
Annuities and interest on loans						
Sinking fund charges and instalment of loans						
Total loan and sinking fund charges						
Surplus or deficiency on year ...						

Balance including reserve or renewal fund—	
Balance at beginning of year ...	
Addition or deduction	
Balance at end of year ... £	

Notes.—Total working expenses: Including all expenditure not provided or to be provided out of loans. Charges for superannuation, compensation and insurance should be dissected as far as possible under the headings to which they refer.

Total available to meet loan charges: The figures under this head to be inclusive of public water rates and deficiencies made good out of the rates.

Surplus or deficiency on year: Where a deficiency is made good out of the rates it should be treated as a public water rate and included under water rental.

The above working statement is drawn for the use of local authorities, but can be adapted for the use of companies.

THAMES CONSERVANCY ACT, 1894.

(57 & 58 VICT. C. CLXXXVII.)

STAINES RESERVOIRS, ETC.

By the Thames Conservancy Act, 1894, the Acts relating to the Conservancy Board were consolidated and amended. As regarded the metropolitan water companies, the Act gave them a certain amount of control over works; and substantial money payments by the companies to the Conservators were provided for—taking the place of earlier enactments on this subject. The following are the sections of the Act relating to the water companies who have now been superseded by the Metropolitan Water Board.

WATER COMPANIES.

Control by metropolitan companies of works of conservators.

291. If at any time any work is done or executed or proposed to be done or executed by the Conservators which in the opinion of any of the metropolitan water companies will injuriously affect either the flow or the purity of the water of the Thames above or at the place where such company draw their supply the company may give notice in writing under their common seal to the Conservators requiring them to alter such work or not to do or execute the proposed work as the case may be and unless the Conservators be willing to comply with such notice the matter shall be referred to an engineer to be nominated by the Board of Trade on the application of the company or the Conservators and such referee shall decide what shall be done in the premises and his decision shall be final and the costs of every such reference shall be in the discretion of the referee.

Contributions by companies.

292. The metropolitan water companies the West Surrey Water Company and the South West Suburban Water Company respectively shall pay to the Conservators the annual sum mentioned in the second column of the Sixth Schedule to this Act opposite the name of such company in the first column of such schedule and each of such sums shall be payable by equal half-yearly payments on the twenty-fourth day of June and the twenty-fifth day of December in every year the first half-yearly payment to become due on the twenty-fifth day of December or the twenty-fourth day of June which shall be next after the passing of this Act such payments in the case of each of the metropolitan water companies to be exclusive and in the case of the West Surrey Water Company and in the case of the South West Suburban Water Company to be inclusive of all payments under any of the agreements mentioned in the Seventh Schedule to this Act or under any other Act not repealed by this Act payable to the Conservators by such company.

Contributions of companies to be first charge on their receipts.

293. The payments to be made under this Act by the metropolitan water companies the West Surrey Water Company and the South West Suburban Water Company respectively shall be the first charge on the net receipts of the said respective companies after and subject only to any debts or charges which were on the eighth day of August one thousand eight hundred and seventy-eight (being the date of commencement of the Act of 1878) payable thereout or charged thereon respectively and in priority to any claim of any shareholders stockholders proprietors or members of or in the said respective

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companies to any dividend or share of profits or receipts and from and after the twenty-fourth day of June or the twenty-fifth day of December which shall be next after the passing of this Act it shall not be lawful for any of those companies at any time to pay or divide any dividend or share of profits or receipts to or among any shareholders stockholders proprietors or members of or in that company unless and until the same company have paid to the Conservators the half-yearly payment accrued due from that company under this Act at the then last preceding twenty-fourth day of June or twenty-fifth day of December as the case may be.

Payments of companies to be without deductions and free from taxes, etc.

294. The half-yearly payments to be made as aforesaid by the metropolitan water companies, the West Surrey Water Company and the South West Suburban Water Company respectively shall be made without deduction and all sums so paid shall in the hands of the Conservators be free from all parliamentary parochial and other general and local taxes rates and assessments whatever.

Power of intersale by metropolitan water companies.

295. Subject and without prejudice to all other terms and conditions in any agreement or Act subsisting and in force at the passing of the Act of 1878 and subject and without prejudice to any agreements validly made under the powers of section fifteen of that Act and subject as herein-after in this section provided it shall be lawful for any one of the metropolitan water companies to supply any part of the total quantity of water which such company are empowered to take from the Thames or from any tributary thereof and which is not required for the purposes of the district of supply of such company to any other or others of the said companies to be used only for the purposes for which the said companies are respectively empowered to provide and use water Provided that the total quantity of water supplied under the powers of this section by any one of the said companies shall not exceed the total quantity which might have been supplied by such company under the powers of section fifteen of the Act of 1878 if that section had not been repealed and this Act had not been passed And provided that every agreement for a continuing supply under the powers of this section shall be made in writing and shall contain due provision that the supply so made shall not be withdrawn without the consent of the purchasing company.

Restriction on quantity of water which may be taken by companies.

296. Subject to the provisions of this Act contained in the section thereof whereof the marginal note is "Power of intersale by metropolitan water companies" the metropolitan water companies the West Surrey Water Company and the South West Suburban Water Company respectively shall not unless and until otherwise authorised so to do by Parliament take a quantity of water from the Thames in any day of twenty-four hours calculated from midnight to midnight greater than the quantity which such company might have lawfully taken in any such day on or before the fifth day of April one thousand eight hundred and ninety-four.

As to ascertaining quantities of water taken from Thames.

297.—(1.) The metropolitan water companies the West Surrey Water Company and the South West Suburban Water Company respectively shall at the cost of them respectively within one year from and after the passing of this Act provide and thereafter maintain in good working order suitable appliances to be approved by the Conservators for measuring or otherwise ascertaining the quantity of water taken by such companies respectively from every source of supply of such companies respectively from the Thames.

(2.) The metropolitan water companies the West Surrey Water Company and the South West Suburban Water Company respectively shall in every week after providing any such appliances make to the Conservators a correct

Sect. 297 (2). return in writing of the total quantity of water taken on each day calculated as aforesaid in the week ending at midnight on the Saturday then last from every source of supply of such company in respect of which such appliances shall have been provided.

(3.) The engineer of the Conservators shall and any other person from time to time thereunto authorised by the Conservators under the hand of the chairman of the Conservators or the secretary shall at all reasonable times have access to all or any part of the premises of the metropolitan water companies the West Surrey Water Company and the South West Suburban Water Company respectively for the purpose of inspecting all or any such appliances and of checking the returns made by such companies respectively and the said companies respectively shall give to such engineer or other person all necessary facilities for inspecting and checking as aforesaid.

(4.) In case any dispute shall arise between the Conservators and any company with reference to the appliances to be provided as aforesaid or to the condition of any appliances provided by such company or to the correctness of any return by this section required to be made by such company the matter shall be referred for determination to the arbitration of an engineer to be appointed by the Board of Trade on the application of either of the parties to such dispute.

Acquisition by agreement of right of abstracting water from the Thames.

298. Where any person is entitled under any Act of Parliament grant custom or otherwise to any right of abstracting or appropriating water which might otherwise flow or find its way into the Thames it shall be lawful for any such person on the one hand and the Conservators or any other person on the other hand to enter into and carry into effect an agreement or agreements for the conveyance of such right to the Conservators and every such right may be conveyed to the Conservators by deed and shall as from the date of such conveyance be absolutely extinguished to the intent that such water shall thereafter be allowed to flow into the Thames.

And it shall be lawful for any of the metropolitan water companies to make contributions out of their capital or revenue for or in aid of the acquisition and extinguishment of any such right and for the Conservators to accept such contributions and contributions from any other person and to employ such contributions for or in aid of the acquisition and extinguishment of any such right.

* * * * *

Schedule 6.

THE SIXTH SCHEDULE.

SUMS ANNUALLY PAYABLE UNDER THIS ACT BY WATER COMPANIES TO CONSERVATORS.

Companies.	Amounts of Annual Payments.
	£
The Governor and Company of Chelsea Waterworks	3,169
The Company of Proprietors of Lambeth Waterworks	3,357
The Grand Junction Waterworks Company...	3,378
The Southwark and Vauxhall Water Company	3,378
The Company of Proprietors of the West Middlesex Waterworks	3,378
The East London Waterworks Company	2,840
The West Surrey Water Company	50*
The South West Suburban Water Company	115

* NOTE.—If the West Surrey Water Company in any year take from the Thames a quantity of water exceeding an average daily quantity of 500,000 gallons, the amount of that company's annual payment shall in that year and thereafter be £100; if exceeding an average daily quantity of 1,000,000 gallons the amount aforesaid shall be £150, and so on.

Staines reservoirs.

By the Staines Reservoirs, etc. Act, 1896 (59 & 60 Vict. c. ccxli.), promoted by the West Middlesex Waterworks Company, the Grand Junction Waterworks Company, and the New River Company, a joint committee of the three companies was constituted, and authorised to construct three reservoirs (s. 38) and to collect and divert waters of the river Thames, and Wraysbury River and the Colne Brook, with certain limitations and conditions (s. 55), paying to the conservators of the river Thames the sum of £2,500 annually (s. 61). Sections 65—69 provide for the proportions in which the three companies are to be entitled to the stored water.

By the Staines Reservoirs Act, 1898 (61 & 62 Vict. c. civ.), enlargements of two of the reservoirs were authorised (s. 5), and certain limitations were imposed on the joint committee with respect to the taking of water (s. 20).

By s. 84 of the Staines Reservoirs Act, 1896, it was provided that if the undertaking of any of the three companies was purchased within seven years of the passing of the Act by any public body or trustees, nothing in the Act should extend or be deemed or construed to extend to authorise the company to bring into account or to make any claim in respect of any advantages conferred on them by or resulting from the passing of the Act. This section was by s. 23 of the Act of 1898 applied to advantages conferred by or resulting from the passing of that Act, and by s. 2 of the Staines Reservoirs (Amendment) Act, 1901, the period of seven years was extended to 6th June, 1906. See s. 10 of the Metropolis Water Act, 1902, p. 604, *post.*

The agreements and statutory provisions empowering the abstraction of water from the Thames and Lee are shown in a Digest compiled by the Metropolitan Water Board, of which a copy is set out, *infra.* It will be seen that the Digest refers not only to the powers of the Metropolitan Water Board but also to certain suburban companies. The Board in their Second Annual Report published a statement of payments to the Thames Conservancy Board, and a copy of this is also set out, *infra.*

DIGEST OF THE AGREEMENTS AND STATUTORY PROVISIONS EMPOWERING

Draught from the Thames.

Body having right of abstraction, and place of abstraction. (1)	Maximum quantity that may be taken from the Thames in any one day. (2)	Maximum daily quantity that may be taken.			Authorisation. (6)
		Without restriction. (3)	Excess water *on the average.* (4)	Total. (5)	
Metropolitan Water Board—	m. g.	m. g.	m. g.	m. g.	
Chelsea ... ... (At West Molesey; emergency intake at Seething Wells.)	20	20		22	Agreement with the Common Council of the City of London, dated 17th June, 1852. Chelsea Waterworks Act, 1875, ss. 25 and 26.
	2	2	—		Agreement with Conservators of Thames, dated 23rd December, 1886.
East London ... (At Sunbury.)	10	10	—	20	East London Waterworks (Thames Supply) Act, 1867, s. 21.
	30	—	10		East London Waterworks Act, 1900, s. 26.
Grand Junction ... (At Hampton.)	24½	24½	--	24½	Agreement with the Common Council of the City of London, dated 23rd June, 1852. Agreement with Conservators of Thames, dated 23rd December, 1886.
Lambeth ... ... (At West Molesey; emergency intake at Ditton.)	20	20	—	45	Agreement with Common Council of the City of London, dated 24th June, 1851. Lambeth Waterworks Act, 1871, s. 24.
	4½	4½	—		Agreement with Conservators of Thames, dated 23rd December, 1886.
	100	—	2		Lambeth Waterworks Act, 1900, s. 22.
Southwark and Vauxhall (At Hampton.)	100	24½	20½	45	Southwark and Vauxhall Water Act, 1898, ss. 15 and 16.

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* This Digest is, by permission of the Metropolitan Water

THE ABSTRACTION OF WATER FROM THE THAMES AND LEE.*

CONDITIONS AND REMARKS. (7)
Confirmed the agreement of 17th June, 1852, saving the rights of the Conservancy thereunder. Agreements of 1852 and 1886 confirmed by Thames Conservancy Act, 1894, s. 296 and 7th sch.
Company may erect gauge or standard near Intake, and Conservancy shall mark thereon a line above which all water flowing shall be considered in flood, and Company shall not take water in times of flood in excess of 10 m.g. in any one day, except when level of river is at or above that line (s. 22). Abstraction, therefore, unrestricted if the river is above flood level as marked by the Conservancy on such gauge or standard. The Lee not for the purposes of this Act a tributary of the Thames (s. 22).
This power of increased take can only be exercised in cases of emergency with the sanction in writing of the Local Government Board and with the consent in writing of the Conservators under their common seal. Such excess water shall not be taken when flow over Molesey Weir does not exceed 190 million gallons a day. On notice from the Conservancy that the flow is at a rate not exceeding 190 million gallons a day the Board shall cease taking or so reduce the rate of taking water that the quantity obtained in any day in which such notice is given shall not exceed 10 million gallons daily authorised take. Any such notice may be given by telephone or telegraph. Savings for Lambeth, Grand Junction, West Middlesex, Chelsea, Southwark and Vauxhall and Staines. Until Molesey Weir in a fit state of measuring, references to be made to Bell Weir and 250 million gallons and Penton Hook Weir and 285 million gallons respectively.
No restriction was placed by the Act of 1852 (which empowered the Company to move their works to Hampton and to draw their supply at Platt's Eyot) on the amount of water to be abstracted; but by the agreement made prior to the passing of the Act the abstraction in any one day was limited to 20 million gallons without the previous consent of the Corporation, and by the agreement of 1886 the amount was increased to 24½ million gallons. Both agreements confirmed by Thames Conservancy Act, 1894, s. 296 and 7th sch.
The Lambeth Act, 1871, s. 24, confirmed the agreement of 1851, as if the said agreement contemplated the taking of water from the Thames at West Molesey, the annual payment being increased from £200 to £250.
The two agreements of 1851 and 1886 confirmed by Thames Conservancy Act, 1894, s. 296 and 7th sch.
Excess water not to be taken when flow over Molesey Weir does not exceed 190 million gallons per day. When in any one day the flow exceeds 190 million gallons per day the quantity of excess water taken shall not exceed the quantity flowing in that day over such Weir in excess of 190 million gallons. On notice from the Conservancy that the flow is at a rate not exceeding 190 million gallons per day the Company shall for that day cease taking excess water. Notice may be given by telephone or telegraph, but shall be addressed to the office at Brixton Hill. If the Molesey Weir is not in a fit state for measuring, refer alternatively to 285 million gallons flow at Penton Hook Weir or 250 million gallons flow at Bell Weir, if either in a fit state for measuring. Savings for authorised abstractions by West Middlesex, Grand Junction, Southwark and Vauxhall, Chelsea, East London and Staines. By s. 21 the Company may continue to take gravel water in addition to river water, but shall not exceed 7½ million gallons daily average. By s. 23 £94 shall be paid for every million gallons daily average during the half-year ended 30th June or 31st December of gravel water and excess water taken.
No quantity in excess of 24½ million gallons shall be taken when the flow at Penton Hook Weir does not exceed 285 million gallons per day, except that pending the completion of Walton Reservoir No. 1 water in excess of 24½ million gallons per day may be taken with the consent of the Conservancy. Provided that when in any day the flow over Penton Hook Weir exceeds 285 million gallons the quantity in excess of 24½ million gallons shall not exceed the quantity flowing over such weir in excess of 285 million gallons. Water not to be taken in excess of 24½ million gallons so as to prejudice the rights of Lambeth, Grand Junction, West Middlesex, Chelsea, East London or Staines. Pending the construction of Penton Hook Weir reference to be made to Bell Weir and 250 million gallons. By s. 16 the average daily amount of water obtained from the Thames which may be *delivered* shall not exceed 45 million gallons.

Board, reproduced from the Third Annual Report of the Board.

Body having right of abstraction, and place of abstraction. (1)	Maximum quantity that may be taken from the Thames in any one day. (2)	Maximum daily quantity that may be taken.			Authorisation. (6)
		Without restriction. (3)	Excess water *on the average.* (4)	Total. (5)	
	m. g.	m. g.	m. g.	m. g.	
West Middlesex ... (At Hampton.)	24½	24½	—	24½	Agreement with the Common Council of the City of London, dated 22nd June, 1852. West Middlesex Waterworks Act, 1866, s. 8. Agreement with Conservators of Thames, dated 23rd December, 1886. West Middlesex Waterworks Act, 1899, s. 21.
		130	51	181	
Staines Reservoirs (Thames, above Bell Weir Lock; Colne Brook, by Hythe End Mills; and Wraysbury River.)	100	—	—	35 maximum daily supply from reservoirs.	Staines Reservoirs, &c., Act, 1896, s. 55.
Total	435½	130	51	216	
Other Authorities— Oxford Corporation	5½	5½	—	5½	48 & 49 Vict. c. xxiv.
Windsor Corporation	—	—	—	—	
West Surrey Water Company	3	3	—	3	51 & 52 Vict. c. civ.
South West Suburban Company	1	1	—	1	46 & 47 Vict. c. cxlvii.
					8 Edw. 7, c. xciv.
Woking Water and Gas Company	7	1	2	3	62 & 63 Vict. c. clxxi.
	16½	10½		12½	
Grand Total ...	452	140½		228½	

Draught from the Lee.

After safeguarding the priorities of the River Lee Trustees in respect of the Upper, Middle, and Lower gallons) within the Upper, Middle, and Lower Reaches respectively, for the purposes of the Navigation—

1. The New River may take 2,500 cubic feet a minute (= approximately 22,500,000 gallons per day).
2. The East London may then take 2,500 cubic feet a minute (= approximately 22,500,000 gallons per day) Either may then take *pari passu,* 500 cubic feet a minute (= approximately 4,500,000 per day), and

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CONDITIONS AND REMARKS.

(7)

Confirmed agreement with the City Corporation limiting the abstraction of water to 20 million gallons a day.

The agreement of 1886 increased the total to 24½ million gallons a day. The legality of this agreement was disputed, but was considered valid in an arbitration in 1888 before Sir Henry (now Lord) James under s. 42 of Metropolis Water Act, 1871.

By the Act of 1899, pending the completion of the Staines Reservoirs, a further "daily excess quantity" of 15 million gallons in any one day and 5 million gallons daily quantity on the average was authorised to be taken in addition to the 24½ million gallons which the Company "are now entitled to draw in any one day" (Preamble); thus confirming the 24½ million gallons. The right to take such daily excess quantity has now lapsed, water having been taken for the first time from Staines Reservoirs on 28th December, 1904.

Draught.—Maximum quantity that may be taken from the Thames, Wraysbury and Colne in any one day, 100 million gallons; but water must not be taken from the Thames so as to reduce the flow over Bell Weir to less than 265 million gallons in any one day of 24 hours; nor from Wraysbury or Colne at any one time at which less than 265 million gallons shall be daily flowing over Bell Weir. If at any time the Conservancy construct a weir at Penton Hook reference to be made in substitution to Penton Hook Weir and 300 million gallons or such other quantity as the Local Government Board shall determine to be an equivalent. Savings for other rights of abstraction.

Delivery.—Maximum quantity that may be delivered from the reservoirs in any one day is 35 million gallons; but in case of emergency 45 million gallons may be delivered with the consent of the Local Government Board (s. 56). Reservoirs to be kept filled to their greatest capacity as far as practicable (s. 57).

By Act 48 & 49 Vict., c. xxiv., ss. 7 and 9, the Oxford Corporation obtained powers to take, free of payment, as much water as they require, by a main pipe not exceeding 2½ inches in diameter. This will allow a maximum of 5½ million gallons to be taken daily.

Undefined. The Windsor and Eton Waterworks Company, transferred to the Windsor Corporation, were authorised by Act of 1883 to take water from land belonging to them but none from the river direct.

By Act of 1869 (32 & 33 Vict., c. cxii.) this Company were empowered to take a supply from the river at Walton on-Thames not exceeding 3 million gallons daily, for which £50 per annum was to be paid to the Conservancy for each half-million gallons taken. Confirmed by Company's Act of 1888 (51 & 52 Vict., c. civ.).

This Company have by Act of 1883 (46 & 47 Vict., c. cxlvii., s. 50) unrestricted powers similar to Windsor Corporation, but, as their lands at Egham are composed of gravel, which allows percolation from the river, the Conservancy have entered into an agreement with the Company limiting the quantity to 1 million gallons to be taken from the river either directly or indirectly, for which the Company pay £115 per annum.

By their Act of 1908 (ss. 4 and 5), the Company were authorised to take from the Thames, but only at or near their works at Egham, 3 million gallons on any day of 24 hours from midnight to midnight, paying to the Conservators in each half-year £125 if the average daily quantity abstracted did not exceed 1½ million gallons, £175 if it exceeded that figure but was less than 2 million gallons and so on with an additional £50 for every additional 500,000 gallons or part thereof.

By the Woking Water and Gas Act, 1899, the Company are authorised to take 1 million gallons unrestricted (s. 6) and 6 million gallons excess water in any one day provided the aggregate during the half-year does not exceed 3 million gallons on the average, the excess water being subject to a flow over Molesey Weir of 190 million gallons (s. 8). Intake to be at Chertsey. Lands to be compulsorily acquired within 5 years (s. 31), and works to be executed within 15 years of passing of Act (s. 32). Water not yet abstracted from Thames.

Exclusive of gravel water (12½ million gallons).

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daily quantities (*i.e.* 576,000, 720,000, and 864,000 cubic feet = approximately 3,600,000, 4,500,000, and 5,400,000

after notice to the other, any additional quantity of water (River Lee Water Act, 1855, ss. 9, 11, and 30).

STATEMENT OF PAYMENTS MADE TO THE THAMES CONSERVANCY BOARD. *

Name of Company.	Annual contribution under the Thames Conservancy Act, 1894, Section 292, and Sixth Schedule (payable half-yearly on 24th June and 25th December).	Annual contribution under Agreements entered into prior to the Thames Conservancy Act, 1894, and confirmed by that Act.			Maximum quantity that may be drawn daily for these payments.
		Date of Agreement (7th Schedule to Act).	Amount of Contribution.	When Payable.	
	£		£		Gallons.
Chelsea	3,169	17th June, 1852 23rd December, 1886	300 500	Yearly at 31st August Half-yearly at 24th June and 25th December	22,000,000
East London	2,840	—	—	—	10,000,000
Grand Junction	3,378	23rd June, 1852 23rd December, 1886	300 1,000	Yearly at 31st August Half-yearly at 24th June and 25th December	24,500,000
Lambeth	3,357	24th June, 1851 23rd December, 1886	†200+50 1,000	Half-yearly at 31st March and 30th September Half-yearly at 24th June and 25th December	24,500,000
Southwark and Vauxhall...	3,378	1st July, 1852 23rd December, 1886	300 1,000	Yearly at 31st August Half-yearly at 24th June and 25th December	24,500,000
West Middlesex	3,378	22nd June, 1852 23rd December, 1886	300 1,000	Yearly at 31st August Half-yearly at 24th June and 25th December	24,500,000
	£19,500		£5,950		130,000,000

Making total fixed payments to the Thames Conservancy of £25,450 per annum. For Staines and excess water, see next page.

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* This Statement is, by permission of the Metropolitan Water Board, reproduced from the Second Annual Report of the Board.

† This payment of £200 was increased to £250 by the Lambeth Water Act, 1871, s. 24, on permission being granted to abstract water at West Molesey.

STAINES WATER.

Staines Reservoirs, &c., Act, 1896, s. 61 (2) provides that—

> "From and after the time the Joint Committee first take water from the River Thames under the powers of this Act, and so long but so long only as they so take water the Joint Committee shall pay to the Conservators on the 24th day of June and the 25th day of December in each year the sum of £2,500" = £5,000 per annum.

EXCESS WATER.

In addition to the above, certain sums are payable for water if the quantities drawn are in excess of those allowed under the foregoing provisions, viz.:—

East London.

By the East London Act, 1900, s. 26, the Company may draw excess water in cases of emergency, with the sanction of the Local Government Board and the consent in writing of the Thames Conservancy, for which the following sums are payable half-yearly under s. 30:—

(*a*) In respect of each half-year in which the average daily excess quantity shall not exceed 2½ million gallons, £250.

(*b*) In respect of each half-year in which the average daily excess quantity shall have exceeded 2½ million gallons but shall not have exceeded 5 million gallons, £500.

(*c*) In respect of each half-year in which the average daily excess quantity shall have exceeded 5 million gallons but shall not have exceeded 7½ million gallons, £750.

(*d*) In respect of each half-year in which the average daily excess quantity shall have exceeded 7½ million gallons, £1,000.

Southwark and Vauxhall.

By the Southwark and Vauxhall Act, 1898, s. 15, the Company may draw water in excess of 24,500,000 gallons to fulfil their statutory obligations for which the following sums are payable half-yearly under s. 21:—

(*a*) Until the average daily excess quantity shall have first exceeded 5½ million gallons, £525 5*s*.

(*b*) When the average daily excess quantity shall have first exceeded 5½ million gallons, until such quantity shall have first exceeded 10½ million gallons, £1,002 15*s*.

(*c*) When the average daily excess quantity shall have first exceeded 10½ million gallons, until such quantity shall have first exceeded 13½ million gallons, £1,002 15*s*., and a sum calculated at the annual rate of £191 per million gallons, by which such quantity shall in the then last past half-year have exceeded 10½ million gallons.

(*d*) When the average daily excess quantity shall have first exceeded 13½ million gallons, until such quantity shall have first exceeded 15½ million gallons, £1,480 5*s*.

(*e*) When the average daily excess quantity shall have first exceeded 15½ million gallons, until such quantity shall have first exceeded 18½ million gallons, £1,480 5*s*., and a sum calculated at the annual rate of £191 per million gallons, by which such quantity shall in the then last past half-year have exceeded 15½ million gallons.

(*f*) When the average daily excess quantity shall have first exceeded 18½ million gallons, £1,957 15*s*.

Lambeth.

By the Lambeth Waterworks Act, 1900, s. 22, the Company may draw such quantity of excess water as they may require within their own district, or to supply to any other Company under the Metropolis Water Act, 1899, for which, under s. 23, the Company shall pay £94 for each daily average quantity of a million gallons taken during the half-year ending 30th June or 31st December, to a maximum daily quantity on the average of 28 million gallons (including 7½ million gallons gravel water).

WATER RATE DEFINITION ACT, 1885.

(48 & 49 VICT. c. 34.)

An Act to declare and explain the sixty-eighth section of the Waterworks Clauses Act, 1847. [31st July, 1885.]

The preamble of this Act is repealed by the Statute Law Revision Act, 1898.

Explanation of 10 & 11 Vict. c. 17, s. 68.

1. The words "the annual value of the tenement supplied with water" in the sixty-eighth section of the Waterworks Clauses Act, 1847, shall, within the unions and parishes to which the Valuation of Property (Metropolis) Act, 1869, extends, mean the rateable value as settled from time to time by the local authority as duly constituted: Provided that where the water rate is chargeable on the annual value of a part only of any hereditament entered in the valuation list, such annual value shall be a fairly apportioned part of the rateable value of the whole tenement, ascertained as aforesaid, the apportionment in case of dispute to be determined in manner provided by the said section.

See *ante*, p. 505, for the section referred to.

See s. 13 of the Metropolitan Water Board (Charges) Act, 1907, *post*, p. 693, whereby the area within which this Act is in operation is increased. The proviso to s. 1, *supra*, is also amended by the substitution of the words "rateable value" for the words "annual value." In *Metropolitan Water Board* v. *Streeton* (1910), 74 J. P. 180, it was held that the procedure provided by the Water Rate Definition Act, 1885, applies not only to s. 68 of the Waterworks Clauses Act, 1847, but also to s. 72 of the Waterworks Clauses Act, 1847, and to s. 58 of the Southwark and Vauxhall Water Act, 1852, and, therefore, in determining whether the annual value of a house within the metropolis does not exceed twenty pounds, so as to make the owner liable for the water rate, it is sufficient to prove that the rateable value of the house as settled by the local authority does not exceed twenty pounds.

Construction of Act.

2. The Waterworks Clauses Act, 1847, and this Act shall, for the purposes of this Act, be construed together as one Act, and the provisions of this Act shall to that extent be held to repeal and supersede such of the provisions of that Act as are inconsistent with this Act.

Short title.

3. This Act may be cited for all purposes as the Water Rate Definition Act, 1885.

LONDON WATER ACT, 1892.

(55 & 56 Vict. c. cxxx.)

An Act with respect to the Supply of Water in London and the neighbourhood. [27th June, 1892.]

Whereas at the present time water is supplied to an area comprising the city of London and the county of London and adjoining boroughs and populous places by certain authorised companies and it is expedient that the provisions hereinafter contained should be made with reference thereto:

May it therefore please your Majesty that it may be enacted and be it enacted by the Queen's most excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same as follows:

1. This Act may be cited as "The London Water Act, 1892." Short title.

2. The London County Council shall have power from time to time to pay the costs and expenses of promoting bills in Parliament relating to the supply of water in the administrative county of London and within the limits of supply of the metropolitan water companies: Powers for introduction of bills in Parliament.

"The metropolitan water companies" mean and include the several companies mentioned in the schedule to this Act.

3. The London County Council shall have power to make inquiries as to the existing supply of water within the metropolitan water area and the charges made for the same and as to the possible sources of supply and may from time to time pay the costs and expenses of such inquiries and of any costs incurred by them in inquiries before royal commissions or otherwise to an extent not exceeding ten thousand pounds in addition to the sum which the council were authorised to pay for similar purposes by section 38 of the London County Council (General Powers) Act, 1890: Powers to make inquiries.

"The metropolitan water area" means the whole of the area within which any of the metropolitan water companies have powers of supply.

The London County Council (General Powers) Act, 1890 (53 & 54 Vict. c. ccxliii.), provided:

> 38. It shall be lawful for the council from time to time to prosecute and conduct inquiries and negotiations relative to the supply of water, or companies supplying water in or near the administrative county of London, and to pay out of the county fund the costs and expenses of such inquiries not exceeding five thousand pounds. Provided that if the council intend that any such inquiry should be open to the public, they shall give notice of the time and place thereof by advertisement published once in each of two successive weeks in two London daily newspapers. Inquiries as to water supply.

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NOTE.

As to investigations.

The London County Council (General Powers) Act, 1893 (56 & 57 Vict. c. ccxxi.), further provides:

> 12. From and after the passing of this Act the council shall have power to expend money in investigating subjects of general importance to the inhabitants of the county as such. Provided that this section shall not authorise the council to expend in any one financial year any greater sum than one thousand pounds in relation to subjects with regard to which, but for this enactment, the council would not have power to expend money.

Payments under this Act.

4. All costs and expenses of the London County Council in the execution of this Act (except so far as they may be otherwise provided for by this or any other Act) shall be defrayed as payments for general county purposes within the meaning of the Local Government Act 1888 and the costs charges and expenses preliminary to and of and incidental to the preparing applying for obtaining and passing of this Act shall be paid by the council in like manner.

SCHEDULE REFERRED TO IN THE FOREGOING ACT.

The Governor and Company of the New River brought from Chadwell and Amwell to London:

The East London Waterworks Company:

The Southwark and Vauxhall Water Company:

The Company of Proprietors of the West Middlesex Waterworks:

The Company of Proprietors of Lambeth Waterworks:

The Governor and Company of Chelsea Waterworks:

The Grand Junction Waterworks Company:

The Company of Proprietors of the Kent Waterworks.

The undertakings of these companies have now been transferred to the Metropolitan Water Board.

METROPOLIS WATER ACT, 1897.

(60 & 61 VICT. C. 56.)

An Act to amend the Law respecting the Metropolitan Water Companies. [6th August, 1897.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Complaint may be made to Railway and Canal Commission.

1.—(1.) Any water consumer or any local authority may complain to the Railway and Canal Commission that any of the metropolitan water companies has failed to perform some statutory duty of the company, and the commission may hear and determine that complaint, and if satisfied of such failure order the company within the time limited by the order to fulfil the duty, and may, if they think fit, by any such order, impose any penalty for such failure which can be imposed under any Act, and enforce any such order in like manner as any other order of the commission.

(2.) If at any time complaint as to the quantity or quality of the water supplied by any of the metropolitan water companies for domestic use is made to the Railway and Canal Commission, by any water consumer or local authority, the commission may hear and determine such complaint, and if satisfied that the complaint is well founded, may order the company, within such reasonable time as is specified in the order, to remove the ground of such complaint, and may enforce such order in like manner as any other order of the commission, and may award damages to the complainant.

57 & 58 Vict. c. 54.

(3.) All enactments relating to the Railway and Canal Commission (except section two of the Railway and Canal Traffic Act, 1894, which restricts the power to award costs) shall, with the necessary modifications, apply to the Railway and Canal Commission for the purpose of their jurisdiction under this Act.

In the annual report of the commission for 1897, Parliamentary Paper, C. 8788, it does not appear that any complaint had been made during that year. In the annual report for 1898, Parliamentary Paper, C. 9176, the only application made during that year was that of the *Hackney Vestry* v. *East London Waterworks Co.* As to that case the report states that its object was "for a declaration under the Metropolis Water Act, 1897, that the water company had failed to use all reasonable and proper measures to perform their statutory duty in supplying a constant supply of pure and wholesome water within their district, and for an order that such water company do supply pure and wholesome water to every part of their district, and a constant supply of pure and wholesome water, sufficient for domestic purposes of the inhabitants, constantly laid on at such pressure as to make such water reach a height of forty feet above the level of the pavement adjoining and nearest to the point at which such supply is required." Owing to the passing of the Metropolis Water Act, 1899 (62 & 63 Vict. c. 7), authorising intercommunication of water supply between the companies, this case was ultimately dropped.

In the annual report for 1899, the commissioners report that no application under the Act of 1897 had been made to them during that year.

In 1901 application was made to the commissioners at the instance of the vestry of St. Mary, Battersea, against the Southwark and Vauxhall Water Company and the Lambeth Water Company. The complaint in these cases related to the quality of the water. The hearing resulted in the application being dismissed, but without costs (Jl. of G. L., January 29th, 1901, pp. 280 *et seq.*).

(4.) This Act shall be in addition to and not in substitution for any existing proceedings or remedy.

A metropolitan borough council is a local authority within the meaning of the section in the text (London Government Act, 1899 (62 & 63 Vict. c. 14), s. 4).

The Local Government Board, in their circular letter to the local authorities, dated October 4th, 1897, with reference to the provisions of the Act of 1897, draw attention to the following:

"The commission may order two or more companies to carry into effect an order of the commission, and to make mutual arrangements for that purpose,

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NOTE.

and may further order the companies or, in case of difference, any of them, to submit to the commission for approval a scheme for carrying into effect the order, and when the commission have finally approved the scheme, they may order each of the companies to do all that is necessary on the part and within the power of such company to carry into effect the scheme, and may determine the proportions in which the respective companies are to defray the expense of so doing, and may for these purposes make, if they think fit, separate orders on any one or more of such companies, but this provision does not authorise the commission to require two companies to do anything which they would not have jurisdiction to require to be done if such companies were a single company (51 & 52 Vict. c. 25, s. 14).

"The aid which may thus be given by a local authority to a water consumer is not limited to cases where complaint is made to the Railway and Canal Commission, nor are the local authority subject to any restriction as regards the class of water consumers whom they may aid. If the question to be determined appears to the local authority to be of interest to water consumers within their district, it is not necessary that the water consumer raising the question should himself be a resident or ratepayer in the district in order to enable the local authority to aid him in the matter."

Power of local authorities to aid water consumers.

2. A local authority may aid any water consumer in obtaining the determination of any question which appears to the local authority to be of interest to water consumers within the district of such local authority with respect to the rights, duties, and liabilities of any of the metropolitan water companies in reference to the quantity or quality of water supplied or the charges made by them. A local authority aiding any legal proceedings under this section may, if the court think fit, be made a party to the proceedings, and shall be liable for costs accordingly.

The following case had been decided before the passing of this Act of 1897. In *Walker* v. *Lambeth Waterworks Co.*, *ante*, p. 474, it had been held by CHITTY, J., that the defendant company were entitled to make a special charge for supplying water to fixed baths in dwelling-houses. At a conference of representatives of the vestries and district boards in South London, dissatisfaction was expressed with this decision, and it was resolved, *inter alia*, "that immediate steps should be taken to obtain a final declaration of the law on the matter"; and advising consumers to continue to refuse to pay the charge pending a final decision. In an application by the Attorney-General on the relation of the water company, NORTH, J., restrained a vestry from applying money out of the rates of the parish in contributing towards the costs of assisting persons to obtain a second declaration of law as to the right of the company to make the special charge, or in doing any other act towards instigating or aiding persons to resist payment of the charge (*Attorney-General* v. *Vestry of Camberwell* (1894), 63 L. J. Ch. 878).

Extension to whole water area, and adaptation of Metropolis Water Acts.

15 & 16 Vict. c. 84.

34 & 35 Vict. c. 113.

3. The Metropolis Water Act, 1852, and the Metropolis Water Act, 1871, shall, as respects the metropolitan water companies, extend to the whole of the area within which any of the companies is for the time being authorised to supply water, and for the purpose of the said Acts as so extended reference to that area shall be substituted for references to "the metropolis" and "the limits of this Act," and as respects any area outside the administrative county of London a reference to the council of a county or county borough shall be substituted for a reference to the metropolitan authority, and so much of the said Acts or of any local Act as is inconsistent with such substitution shall be and is hereby repealed.

Return of proceedings taken.

4. The Railway Commissioners shall include in their annual report a return of all proceedings taken before them under this Act.

5. In this Act, unless the context otherwise requires,— **Sect. 5.**

Definitions.

The expression "metropolitan water companies" means the water companies specified in section three of the Metropolis Water Act, 1871, namely, the New River Company, the East London Waterworks Company, the Southwark and Vauxhall Water Company, the Company of Proprietors of the West Middlesex Waterworks, the Company of Proprietors of Lambeth Waterworks, the Governor and Company of Chelsea Waterworks, the Grand Junction Waterworks Company, and the Company of Proprietors of the Kent Waterworks:

34 & 35 Vict. c. 113.

The expression "water consumer" means any person who is supplied with water by any of the metropolitan water companies, or who pays or is liable to pay any money charged by any of those companies for or in respect of the supply of water, whether under the name of rent, rate, or otherwise, and includes any householder or owner or occupier of a house entitled to make a communication with the mains or pipes of any of those companies: Provided that nothing in this Act shall affect the terms of any agreement existing at the time of the passing of this Act between a water company and a water consumer as to the supply of water:

The expression "local authority" means the council of any county, borough, or district, the mayor, aldermen, and commonalty of the city of London, and any vestry, district board, or local board of health in the county of London.

Short title and commencement.

6.—(1.) This Act may be cited as the Metropolis Water Act, 1897.

(2.) This Act shall come into operation on the first day of September next after the passing thereof.

METROPOLIS WATER ACT, 1899.

(62 VICT. c. 7.)

An Act to enable and require the Metropolitan Water Companies to supply each other with Water in cases of emergency. [6th June, 1899.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Duties and powers of metropolitan water companies as to

1.—(1.) It shall be the duty of the several metropolitan water companies, and they are hereby respectively authorised—

(a) if so required by the Local Government Board, to submit schemes for works enabling the companies to supply each other with

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mutual supply of water.

water from any sources of supply which any company are for the time being empowered to use, and to construct such works as may in the opinion of the Board be necessary for that purpose ; and

(b) whenever in the opinion of the Local Government Board a case of emergency has arisen, or is likely to arise, to supply, at a reasonable cost, and to such extent and during such period as the Board may direct, such water as may be required for the need of another metropolitan water company and may be available after satisfying the requirements of the district of the supplying company.

(2.) For the construction and maintenance of works required for the purposes of this Act each of the water companies may exercise within and without their district the same powers as they may exercise within their district for the purpose of supplying the same, and nothing in any Act, whether general or local, shall prevent any such company from supplying water to another company or for another district.

(3.) The cost of constructing works under this Act shall be borne, and the money required for the construction of such works shall be raised by the issue of debenture stock under the powers of this Act, by the company actually constructing the same, but the interest on such stock shall, subject as herein-after provided, be borne by the metropolitan water companies in proportion to their respective water rentals as appearing from time to time from their published accounts for their respective last completed year. Provided that any company receiving water by means of such works shall pay during the time they take such water, in addition to any other sum payable under this sub-section, such proportion of the interest on the total cost of their construction, not exceeding twenty pounds a day, as may be agreed by all the companies, or failing agreement be fixed by arbitration.

(4.) If any question arises as to the terms on which water is to be supplied by a company in pursuance of this Act, the question shall be settled by arbitration.

52 & 53 Vict. c. 49.

(5.) An arbitration under this section shall be in accordance with the Arbitration Act, 1889, and before an arbitrator appointed by the Local Government Board.

(6.) The Local Government Board may make such orders as they may deem necessary—

(a) fixing the times within which schemes are to be submitted and works are to be constructed ; and

(b) determining the extent to which, and the period during which, supply is to be given, in pursuance of this Act ; and

(c) prescribing the information to be supplied by the metropolitan water companies to the Local Government Board for the purposes of this Act.

If any of the metropolitan water companies makes default in compliance with any such order, the company shall be liable for every day during which the default continues to a penalty of one hundred pounds, which may be recovered by the Local Government Board as a debt due to the Crown. Provided that the Court may, if they think fit, adjudge the payment as a penalty of any sum less than the full amount of the penalty.

In 1897, a Royal Commission (presided over by Viscount Llandaff) was appointed to inquire into many questions connected with the water supply of the metropolis (see more fully in the Introduction). One of these questions was "whether it is practicable to connect any two or more of the different systems of supply now administered by the eight metropolitan companies, and, if so, by whom and in what proportion should the cost of connecting them be borne, and what are the legal powers necessary to give effect to any such arrangement?" The commissioners took up this matter at the outset of their labours, and made it the subject of their First Report (Parliamentary Paper, C—9122, of 1898). The water companies readily assisted them, and submitted several schemes. They also undertook to submit proposals to the Local Government Board for approval. The commissioners reported in favour of the practicability. The Act in the text was the outcome of this report.

Issue of debenture stock.

2.—(1.) A metropolitan water company may, with the consent of the Local Government Board, raise any money required to be contributed by the company for the construction of the works needed to give effect to the requirements of this Act by the issue of debenture stock, but the Board shall make it a condition of their consent that the stock be raised in accordance with the provisions contained in the most recent Act for the time being with reference to the issue of debenture stock by a metropolitan water company.

(2.) The power under this section of raising money by the issue of debenture stock shall apply to expenditure incurred by any metropolitan water company after the first day of September one thousand eight hundred and ninety-eight upon the construction of works which would have been legal if they had been required to be constructed, and had been constructed in pursuance of this Act.

Provided that a company shall not be required to carry to a sinking fund a percentage on the amount of money for the time being raised by the issue of debenture stock created under the powers of this Act.

Provision in case of future purchase of undertaking.

3. *If the undertaking of any of the metropolitan water companies is purchased within seven years from the passing of this Act, otherwise than by agreement, by any public body or trustees, nothing in this Act shall authorise the company to bring into account or to make any claim in respect of any advantages conferred on them by or resulting from the passing of this Act.*

In consequence of the acquisition of the undertakings of the metropolitan water companies by the Metropolitan Water Board, the provisions of this section are now spent, and it was accordingly repealed by the Statute Law Revision Act, 1908.

Inquiries and expenses.

4.—(1.) The Local Government Board may direct an inspector to hold any inquiry which the Board may deem necessary for the

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38 & 39 Vict. c. 55.

purposes of this Act, and every such inspector shall, for the purposes of any such inquiry, have all such powers as an inspector has for the purposes of inquiries directed by the Board under the Public Health Act, 1875.

(2.) All costs, charges, and expenses incurred by the Local Government Board in relation to any scheme submitted or inquiry held under this Act, including the expenses of any witnesses summoned by the inspector holding any such inquiry and a sum to be fixed by the Board for the services of any such inspector, shall be paid to the Board by the metropolitan water companies, or some of them, as the Board may direct, and may be recovered as a debt due to the Crown.

For protection of outside areas.

5. Nothing in this Act shall authorise the construction by any metropolitan water company of any works for the purpose of utilising any supplies of water drawn from wells outside the districts of the metropolitan water companies not now utilised under the powers possessed by such companies.

Meaning of metropolitan water companies.

6. In this Act the expression "metropolitan water companies" means the water companies specified in section three of the Metropolis Water Act, 1871.

34 & 35 Vict. c. 113.

Short title.

7. This Act may be cited as the Metropolis Water Act, 1899.

METROPOLIS WATER ACT, 1902.*

(2 Edw. 7, c. 41.)

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METROPOLIS WATER ACT, 1902.

(2 Edw. 7, c. 41.)

An Act for establishing a Water Board to manage the supply of Water within London and certain adjoining Districts, for transferring to the Water Board the undertakings of the Metropolitan Water Companies, and for other purposes connected therewith. [18th December, 1902.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Establishment of Water Board.

Establishment of Water Board.

1.—(1) A board, to be called the Metropolitan Water Board, and in this Act referred to as "the Water Board," shall be established for the purpose of acquiring by purchase and of managing and carrying on the undertakings of the companies mentioned in the First Schedule to this Act (in this Act referred to as "metropolitan water companies"), and generally for the purpose of supplying water within the area described in the Second Schedule to this Act, subject to such alterations therein as may be made by or under this Act (which area is in this Act referred to as "the limits of supply").

Incorporation.

(2) The Water Board shall be a body corporate with a common seal having power to acquire and hold land for the purposes of this Act, without licence in mortmain.

Constitution. Chairman and vice-chairman.

(3) Subject to the provisions of this Act, the Water Board shall consist of a chairman, a vice-chairman, and other members ; the chairman and vice-chairman shall be appointed by the Water Board, and the other members shall be appointed as follows :—

Other members.

Fourteen by the London County Council.

Two by the common council of the City.

Two by the council of the city of Westminster.

One by the council of each of the other metropolitan boroughs.

One by the county council of Essex.

Two by the council of the borough of West Ham.

One by the council of the urban district of East Ham.

One by the council of the urban district of Leyton.

One by the council of the urban district of Walthamstow.

One by the councils of the urban districts of Buckhurst Hill, Chingford, Loughton, Waltham Holy Cross, Wanstead, and Woodford.

One by the county council of Kent.

One by the councils of the urban districts of Beckenham, Bromley, Chislehurst, Penge, Bexley, Dartford, Erith, and Footscray.

One by the county council of Middlesex.

One by the council of the urban district of Tottenham.

One by the council of the urban district of Willesden.

One by the council of the borough of Ealing and the councils of the urban districts of Acton and Chiswick.

One by the councils of the urban districts of Brentford, Hampton, Hampton Wick, Hanwell, Heston and Isleworth, Sunbury, Teddington, and Twickenham.

One by the councils of the urban districts of Edmonton, Enfield, and Southgate.

One by the councils of the urban districts of Hornsey and Wood Green.

One by the county council of Surrey.

One by the council of the borough of Kingston and the councils of the urban districts of East and West Molesey, Esher and the Dittons, Ham, Surbiton, Barnes, the Maldens and Coombe, and Wimbledon.

One by the county council of Hertfordshire.

One by the Conservators of the River Thames.

One by the Lee Conservancy Board.

Salaries of chairman and vice-chairman.

(4) The Water Board may pay to the chairman and vice-chairman or either of them such salary or salaries as the Board may determine.

Proceedings as in Sched. III.

(5) Subject to the provisions of this section the provisions of the Third Schedule to this Act with respect to the constitution and proceedings of the Water Board shall have effect.

See the Table showing the area of the Metropolitan Water Board, at p. 640, *post.*

See, as to the meaning of the term "undertaking," s. 37, *post*, p. 624, and as to the New River Company, s. 9, *post*, p. 601.

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As to alterations in area made by or under the Act, see s. 3 in conjunction with s. 32—36; see also ss. 12, 13, and 26.

As to the words "subject to the provisions of this Act," see s. 26 (1).

As to the appointment of the chairman and vice-chairman, see paragraph 1 of the Third Schedule, *post*, p. 634.

TRANSFER TO WATER BOARD OF UNDERTAKINGS OF COMPANIES.

Transfer of undertakings of water companies to Board.

2.—(1) Subject to the provisions of this Act, as from the appointed day the undertaking of each of the metropolitan water companies shall be transferred to and shall vest in the Water Board, and there shall also be transferred from each company to the Water Board all liabilities with respect to any debenture stock or mortgage debt of such company, and all other debts, liabilities, and obligations of such company then existing.

(2) The Water Board shall pay to each company, as compensation for the transfer of their undertaking, such sum as may be agreed on between the Board and the company, or, in default of agreement, as may be determined by arbitration under this Act, but the sum so payable may, if the Water Board and the company so agree, be discharged wholly or partly in water stock.

(3) An agreement for the purposes of this section shall not be made except in pursuance of a resolution of an absolute majority of the whole number of the Water Board after ten clear days' notice in writing of the meeting and of the intention to propose the resolution has been given to every member of the Board, and any such notice shall state the amount of the sum to be paid, or of the water stock to be issued, under the proposed agreement. Any such agreement shall be valid only if and so far as it is confirmed by the Court of Arbitration constituted by this Act, and that Court may confirm the agreement either with or without modifications.

See s. 37, *post*, p. 624, as to meaning of "appointed day."

See as to the meaning of the expression "undertaking," s. 37, *post*, p. 624; and as to the New River Company, s. 9, *post*, p. 601.

See the provisions of s. 9 (4) as to the mode of payment in the case of the New River Company.

Particulars are given of the cost of the acquisition of the undertakings in the Fourth Annual Report of the Metropolitan Water Board.

Effect of transfer.

3. Subject to the provisions of this Act, as from the appointed day, the Water Board shall hold the undertaking of each metropolitan water company and may exercise all the rights, powers, authorities, and privileges of the company, and shall (to the exclusion of the company) be subject to all the duties, obligations, and liabilities of the company under the Acts, whether local or general, and the charters, orders, and other provisions relating to the company in like manner mutatis mutandis as if they were the company, and where the company are, immediately before the appointed day, supplying water otherwise than in bulk in any parish in which they are not by the Acts relating to the company authorised to supply water, those Acts and all public general Acts applying to the metropolitan water companies shall as from that date extend and apply to that parish and the works of the company comprised therein, as if the parish had been a parish in which the company were authorised to supply water :

Provided that so much of any Act as authorises or requires any such company to supply water otherwise than in bulk in any place which, in accordance with the provisions of this Act, ceases to be within the limits of supply, shall not, so long as that place continues to be without the limits of supply, apply to the Water Board.

The opening words of this section refer to provisions such as those contained in ss. 6 (3), 16 (5), and 26 (3).

In Sunbury and Chessington, water was, at the time of the passing of this Act, being supplied without authority (see notes (*h*) and (*i*), at p. 661, *post*), and these places were by the Second Schedule expressly included in the limits of supply of the Water Board. There were, however, other cases of unauthorised supply, and the effect of the section is to legalise a continuance of the supply to these places.

The proviso at the end of the section meets those cases where under ss. 12 and 13 districts cease to be within the limits of supply.

Security for mortgage and other debts transferred to Board.

4. As from the appointed day any debts, debenture stock, or rentcharges or other annual payments secured on the undertaking or income of any of the metropolitan water companies or any part thereof shall be by virtue of this enactment secured in like manner on the water fund established by this Act, and any debts, debenture stock, or rentcharges or other annual payments charged on any specific property of any such company shall remain charged on that property ; and the mortgagee or other person secured shall have the same rights and remedies, as nearly as may be, against the Water Board and the water fund or any specific property charged, as he would have had against the company and the undertaking or income, or the specific property charged, if this Act had not been passed.

Discharge, application, and distribution of compensation.

5.—(1) The money or stock to which a metropolitan water company become entitled under this Act in consideration for the transfer of their undertaking shall be paid or issued to the company by the Water Board within six months after the appointed day or after the ascertainment of the amount thereof, whichever date is the later.

(2) The money or stock so paid or issued shall be applied and distributed in the manner provided with respect to the company in the Fourth Schedule to this Act. This sub-section shall not apply to the New River Company.

Application of sinking funds.

6.—(1) As soon as the compensation to which any metropolitan water company are entitled has been applied and distributed in accordance with the provisions of this Act, the Chamberlain of the City of London shall transfer to the Water Board all money or other property received by him in respect of the stock or shares of the company held by him, and applicable as a sinking fund towards the purchase of the undertaking of the company under the special Acts of the company, and shall at the same time transfer to the Water Board any debenture stock or money held by him and applicable towards the same purpose.

(2) Any water stock or debenture stock transferred to the Water Board under this section shall be forthwith cancelled and extinguished.

(3) So much of any local Act as requires any such company to make periodical payments to any such fund as aforesaid shall not apply to the Water Board.

Substitution of water stock for irredeemable debenture stock.

7.—(1) Within two years from the appointed day all irredeemable debenture stock shall be extinguished, and the Water Board shall issue to the holders thereof in substitution therefor the amount of water stock to which they are severally entitled under this section.

(2) The amount of water stock to be so issued to a holder of debenture stock shall be such an amount as is sufficient to produce the same sum by way of income as the debenture stock in substitution for which it is issued.

(3) As soon as the Water Board resolve to issue water stock in substitution for any debenture stock under this section, they shall give notice of their intention to do so by advertising it once in the London Gazette and in two or more London daily newspapers, and by sending notice by post to each of the holders of that debenture stock, to his registered address, and the notice shall specify the place and the time, not being less than three months from the date of the notice, at which the issue of water stock will be made.

(4) Before water stock is issued under this section in substitution for any debenture stock the certificate of that stock shall be produced and delivered to the Water Board: Provided that the Water Board shall dispense with the production and delivery of a certificate upon receiving such indemnity as may be reasonably required.

(5) As from the time fixed by the notice for the issue of water stock in substitution for any debenture stock, that debenture stock shall be cancelled and extinguished, and no interest shall after that time accrue in respect thereof, but the water stock issued in substitution therefor shall carry interest as from the time so fixed.

(6) Water stock issued under and for the purposes of this section shall not be redeemable until after the expiration of sixty years from the thirty-first day of March one thousand nine hundred and three.

(7) The water stock under this section substituted for any irredeemable debenture stock shall be held in the same rights, on the same trusts, and subject to the same powers, provisions, charges, and

liabilities as those in, on, or to which the debenture stock was held immediately before the substitution, and so as to give effect to, and not to revoke, any deed, will, or other instrument or testamentary or other disposition disposing of or affecting the debenture stock, and every such deed, will, instrument, or disposition shall take effect with reference to the whole or a proportionate part, as the case may be, of the substituted water stock.

Provision as to redeemable debenture stock and mortgage debts.

8.—(1) The Water Board shall, within one hundred years from the thirty-first day of March one thousand nine hundred and three, purchase or redeem, and pay off, all redeemable debenture stock and all mortgage debts, and any stock so purchased or redeemed by the Board shall, as from the date of the purchase or redemption, be extinguished and cancelled.

(2) The holder of any such debenture stock or mortgage debt, whether or not he is a trustee or under any disability, may agree with the Water Board to accept water stock in lieu of money in consideration of his debenture stock or mortgage debt.

(3) Nothing in this section shall be construed as authorising the Water Board to redeem debenture stock otherwise than in accordance with the conditions as to redemption applicable to the stock.

New River Company.

9. With respect to the New River Company and the undertaking thereof, the following provisions shall have effect notwithstanding anything in this Act contained:—

(1) The undertaking of the New River Company shall not include any landed estate, houses, or property of the company not directly used for or connected with their water supply, nor any books, accounts, or documents relating solely to such estate, houses, and property nor any books, accounts, or documents which though connected with their water supply also relate to other parts of the undertaking or property of the New River Company, all which landed estate, houses, and property and books, accounts, and documents so excepted shall be specified in a schedule sealed with the seal of the company, and signed by the governor of the company and by a secretary of the Local Government Board, and deposited with that Board; and all such estate, houses, and property and every part thereof shall, as from the appointed day, be absolutely freed and discharged from the debenture stock of the New River Company and the Staines Reservoirs guaranteed debenture stock, and from all principal moneys and interest thereby secured.

(2) There shall be excepted from the debts, liabilities, and obligations of the New River Company transferred to the Water Board all debts, liabilities, and obligations of that company incurred solely in respect of such estate, houses, and property as aforesaid, or any part thereof.

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(3) The undertaking of the New River Company shall not include such part of the offices and premises in Rosebery Avenue now in the occupation of that company and the office furniture and fittings therein as may after the appointed day be reasonably required for the purposes of the company, and all structural or other alterations which may be requisite for the division of the said offices and premises shall be executed at the expense of the Water Board, and in case of difference as to such division or the cost thereof the same shall be settled by the Court of Arbitration.

(4) The sum payable to the New River Company as compensation for the transfer of their undertaking shall be discharged wholly in water stock, and the amount thereof shall, in default of agreement made in accordance with the provisions of section two of this Act, be determined by arbitration under this Act.

(5) The Court of Arbitration constituted under this Act shall settle and determine the shares and proportions in which so much of the water stock issued to the New River Company under this Act as is distributable amongst the shareholders of the company shall be apportioned as between—

(*a*) the owners of the thirty-six parts or shares in the Adventurers' moiety of the undertaking of the New River Company (hereinafter referred to as "the Adventurers' shares"); and

(*b*) the owners of the thirty-six parts or shares in the King's moiety of the undertaking of the New River Company (hereinafter referred to as "the King's shares"); and

(*c*) the owners of the New River Company's new shares issued under the New River Company's Act, 1866.

But in determining the proportion of water stock to be apportioned to the owners of the Adventurers' shares the Court of Arbitration shall have regard to the sum payable to the New River Company under this Act and distributable amongst the directors by way of compensation for loss of office.

(6) The transfer of the undertaking of the New River Company to the Water Board shall include the transfer of all interest and estate of any shareholder of the company in any land or property forming part or used for the purposes of the undertaking of the company and not excepted by the provisions of this section.

(7) Every Adventurers' share and every King's share, and every part of an Adventurers' or King's share, and any water stock issuable or issued in respect of any such share or part of a share, and the right to receive any such water stock shall—

(i.) until the appointed day; and

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(ii.) after the appointed day, but thereafter only unless or until—

(*a*) some person who is *sui juris* is absolutely entitled beneficially in possession to or has a general power to dispose of such share or part of a share, or such water stock; or

(*b*) such share or part of a share, or such water stock or the right to receive such water stock, is transferred on a sale to a purchaser

for all purposes of disposition, transmission, and devolution, be considered as land, and (so far as regards such water stock or right to receive water stock) be held for and go to the same persons in the same manner and for and on the same estates, interests, and trusts as the Adventurers' or King's share, or the part of an Adventurers' or King's share, in respect of which the water stock is issuable or issued, would have been held and have gone under any will, settlement, or other instrument affecting that share or part of a share, or otherwise, if this Act had not been passed.

For the purposes of this provision the expression "general power" includes every power or authority enabling the donee or other holder thereof to appoint or dispose of the fee simple or absolute interest of or in property in possession as he thinks fit, but exclusively of any power exercisable in a fiduciary capacity or exercisable as tenant for life under the Settled Land Acts, 1882 to 1890, or as mortgagee.

(8) The New River Company shall, in the next or next succeeding session of Parliament, introduce into Parliament a Bill to make provision for the application and distribution of the water stock issued to the New River Company in consideration for the transfer of their undertaking, and provisions shall be inserted in such Bill for (amongst other matters) the following, that is to say:—

(*a*) The distribution of the water stock amongst the several persons entitled to or interested in the Adventurers' shares the King's shares, and the New River Company's new shares respectively, with all such provisions as may be necessary or desirable for the purpose of preserving the respective rights of such several persons and otherwise in relation to such stock;

(*b*) The transfer into court of any water stock in any case where the New River Company are unable to find the person to whom the same is issuable, or where the New River Company are unable to obtain an effectual discharge for the same;

(*c*) The eventual winding up and dissolution or the reconstruction of the New River Company;

And any further provisions which may be necessary or desirable in relation to the distribution of the compensation for the transfer of

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the undertaking of the New River Company, and for the protection of the directors of the company, shall be inserted in the Bill.

(9) The Water Board shall, if so required by the New River Company, instead of issuing to the company the whole of the water stock to be issued to them under this Act, issue that water stock to such amounts and to such persons as the company may require, and the issue of water stock in accordance with such requirements shall to that extent discharge the Water Board of their liability to issue water stock to the company.

Staines Reservoirs Joint Committee.

10. No compensation shall be payable under this Act to the Staines Reservoirs Joint Committee for the transfer of their undertaking to the Water Board, and on the appointed day that committee shall be dissolved, but nothing in this section shall prejudice or affect any claim which any metropolitan water company make in respect of the interest of the company in the undertaking of the joint committee or any expenditure by the company in respect of the said undertaking.

See as to the Staines Reservoirs Joint Committee, *ante*, p. 579.

PROVISIONS AS TO CERTAIN BOROUGHS AND DISTRICTS.

Transfer of water undertakings of the Tottenham and Enfield District Councils.

11.—(1) As from the appointed day the water undertaking of the councils of the urban district of Tottenham, and of the urban district of Enfield, shall be transferred to and shall vest in the Water Board freed from all debts, liabilities, and obligations of the council incurred in respect of or attaching to the undertaking.

(2) The Water Board shall pay to each council in consideration for the undertaking so transferred such a sum as may be agreed on between the Board and the council, or in default of agreement as may be determined by arbitration under this Act.

(3) All securities granted before the appointed day on the credit of any fund or rate of either of the said councils, as well as all unsecured debts, liabilities, and obligations incurred by either of those councils in respect of their water undertaking shall be discharged, paid, and satisfied by that council.

(4) Each council shall apply any sum received by them under this section in discharging any capital liabilities incurred by them in respect of their water undertaking or with the consent of the Local Government Board for any other purpose for which capital money may be applied by the council or partly in the one way and partly in the other.

(5) The Water Board shall, as from the appointed day, supply water in such parts of the urban district of Tottenham as are immediately before that date supplied by the council thereof, and that supply shall be furnished by the Board as if in exercise of their powers as successors of the New River Company, and the Acts relating to and the regulations made by that company shall apply not only to the parts so supplied, but

also to the remaining parts of that district, except the portion supplied by the East London Waterworks Company.

(6) The Water Board shall, as from the appointed day, supply water in such parts of the urban district of Enfield as are immediately before that date supplied by the council thereof, and that supply shall be furnished by the Board as if in exercise of their powers as successors of the New River Company, and the Acts relating to and the regulations made by that company shall apply not only to the parts so supplied, but also to the remaining parts of that district, subject however, as regards a portion of the district of Enfield, to the provisions of this Act with respect to the Barnet District Gas and Water Company.

(7) The provisions of this Act as to—

(*a*) the inspection of works; and

(*b*) the inspection and taking copies of and extracts from books, accounts, and documents; and

(*c*) Existing officers and existing servants; and

(*d*) Agreements

shall apply to the waterworks, and the books, accounts, and documents relating thereto, and the officers and servants employed solely thereon or in connection therewith, of the councils of the urban districts of Tottenham and Enfield, and to agreements between the Water Board and those councils, in like manner as they apply to the works, books, accounts, and documents, and existing officers and existing servants of the metropolitan water companies, and to agreements between the Water Board and those companies.

(8) For the purposes of this section the expression "water undertaking" includes all lands, buildings, wells, works, materials, and plant of the councils suitable to and used by them for the purposes of supplying water within their districts, and all books, accounts, and documents relating solely thereto.

The urban district of Tottenham lay wholly within the limits of supply of both the New River Company and the East London Waterworks Company, but each of these companies supplied only a small portion of the district, the greater portion of the district being supplied by the urban district council under the powers conferred by the Public Health Act.

The urban district of Enfield was within the limits of supply of the New River Company, and a small portion of the district was also within the limits of supply of the Barnet District Gas and Water Company. The New River Company were not in fact supplying water within the district, but the Barnet Company were supplying water to the portion of the district within their limits of supply (see s. 35, *post*, p. 623, which preserved the rights of the Barnet Company). See note (*e*), at p. 660, *post*.

Provisions as to Croydon, Richmond, Cheshunt, and Ware.

12. As from the appointed day such parts of the boroughs of Croydon and Richmond, and of the urban districts of Cheshunt and Ware, as are within the limits of supply shall cease to be within the limits of supply, and the powers, rights, and duties of the councils of those boroughs and districts with respect to the supply of water shall extend throughout their respective boroughs and districts, and all such waterworks and plant transferred to the Water Board under this Act as are situate in any such borough or urban district and which are at the passing of this Act or have been within six months immediately previous thereto in actual use for the supply of any part of the borough or district (other than waterworks or plant used for supplying with water any other place within the limits of supply) shall be transferred to and shall vest in the council of the borough or district in which they are so situate upon such terms as may be agreed upon between the council and the Water Board, or, in default of agreement, as may be determined by arbitration under this Act, and the council shall also pay to the Water Board in respect of the loss by the Water Board and the acquisition by the council of the right of supplying water within the parts of the borough or urban district within which the council are not supplying water at the passing of this Act, such sum (if any) as may be agreed upon or determined in like manner.

The councils of the places mentioned in this section had at the time of the passing of this Act water undertakings of their own. A complement of the section will be found in s. 38 and the Fifth Schedule to the Act, whereby are repealed certain sections of the Croydon Corporation Act, 1884, which restrained the corporation from supplying water in a portion of the borough.

See the provisions of the next section as to the supply of water in bulk to the four places mentioned in the section.

Supply in bulk to Croydon, Richmond, Cheshunt, and Ware.

13.—(1) The Water Board shall if required by the council of the borough of Croydon or Richmond, or of the urban district of Cheshunt or Ware, or by the council of any rural district situate wholly or partly within the limits of supply, supply water in bulk to that council for use within any part of the district of the council which at the passing of this Act was within the limits of supply, in such quantities, and at such price and generally upon such terms and conditions as may be agreed upon between the council and the Water Board, or, in default of agreement, as may be determined by arbitration, and the agreement or award may provide for the revision from time to time of the quantity of water to be supplied, and the price, terms, and conditions of the supply and for the discontinuance of the supply in such manner as may be specified in the agreement or award:

Provided that if the Water Board are required to supply water in bulk to the council of a rural district the district shall cease to be within the limits of supply, and if the district is one in which, at the date of the requisition, there are situate any waterworks and plant belonging to the Water Board, which are at the date of such requisition or have been within six months immediately preceding thereto in actual use for the supply of any part of such district the waterworks and plant so situate and used (except the waterworks or plant necessary for supplying with water any other place within the limits of supply) shall be transferred to and shall vest in the council upon such terms as may be agreed upon between the council and the Water Board, or, in default of agreement, as may be determined by arbitration, and the council shall also pay to the Water Board in respect of the loss by the

Water Board, and the acquisition by the council, of the right of supplying water within the parts of the district within which the council are not supplying water at the date of such requisition such sum (if any) as may be agreed upon or determined in like manner.

(2) Where the price to be paid for a supply of water in bulk or the quantity of water to be so supplied or the terms and conditions of the supply can be determined in the course of an arbitration held for the purpose of determining the price to be paid for waterworks and plant transferred by this Act to the council of a borough or urban district, or the sum to be paid in respect of the right of supplying water, the price, quantity, terms, or conditions shall if necessary be determined at that arbitration; but save as aforesaid an arbitration under this section shall be in accordance with the provisions of the Public Health Act, 1875, with respect to arbitrations authorised by that Act, and the provisions as to arbitrations under this Act shall not apply.

(3) Where any metropolitan water company before the passing of this Act have from time to time supplied water in bulk to any person in any district in which the company are not authorised to supply water, the Water Board may continue to furnish such a supply upon such terms and subject to such conditions as may be agreed upon between the Water Board and the person supplied.

When water is required to be supplied to any district in Hertfordshire, the special provisions contained in the next section as to the determination of the quantity of water to be supplied must be observed. Although, in consequence of its having required a supply of water under this section a rural district has ceased to be within the limits of supply of the water, it may again be brought within the limits if it should afterwards become an urban district (see s. 26 (2)).

Hertfordshire.

14.—(1) The quantity of water to be supplied in bulk under the provisions of this Act by the Water Board to the council of an urban or rural district in Hertfordshire shall not be determined by agreement or arbitration, but shall be such quantity as the council may require, so, however, that the quantity required in any quarter shall not exceed such quantity as will suffice to afford the like quantity of water per head of the population within the area supplied by the council as was during the corresponding quarter in the preceding year supplied per head of the population within the limits of supply, and that the quantity required in any one day shall not not exceed one sixtieth of the total quantity which can be required during the quarter comprising that day and any questions arising under this sub-section shall be determined by the Local Government Board.

(2) In the event of the council of the urban district of Hoddesdon becoming entitled to construct waterworks within their district, the provisions of this Act relating to the supply of water in bulk to the councils of rural districts shall apply as if that urban district were a rural district in Hertfordshire.

The Hoddesdon Waterworks Company supply water within a portion of the urban district of Hoddesdon, and the right of the district council to establish

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waterworks of their own would appear to be fettered by the provisions of s. 52 of the Public Health Act, 1875. Should they in the future become entitled to construct waterworks, and thereupon demand a supply of water in bulk under s. 13, the urban district will cease to be within the limits of supply of the Water Board (see s. 13).

FINANCIAL PROVISIONS.

Water fund.

15.—(1) There shall be established a water fund, and all receipts of the Water Board shall be carried to that fund, and all payments by the Board shall be made out of that fund.

Apportionment of deficiency among London borough and urban districts outside.

(2) Any sum required to meet any deficiency in the water fund, whether for satisfying past or future liabilities, in any financial year, shall be apportioned amongst the City of London and the metropolitan boroughs in the County of London and the municipal boroughs and urban districts outside London, the councils of which are for the time being entitled to be represented on the Water Board, in proportion to the rateable value appearing in the valuation lists in force on the preceding sixth day of April of the hereditaments at that date supplied with water by the Water Board or any metropolitan water company or the council of the urban district of Tottenham or Enfield in the City and each such borough and district.

It is to be observed that no part of the deficiency is to be paid by any council which is not entitled to be represented on the Water Board. See s. 1 (3), *ante*, p. 596.

It should also be noticed that the quota of those districts which must contribute is not to be ascertained according to the rateable value of all the rateable hereditaments, but according only to the rateable value in each district of the hereditaments supplied with water. When, however, the quota is ascertained, it is to be raised on the whole of the rateable hereditaments in each district out of the rate specified in sub-section (4).

The incidence of the rate will vary according as the district to be rated is inside or outside the county of London. The expenses incurred by the councils of municipal boroughs and urban districts are for the most part (see the exceptions in s. 207 of the Public Health Act, 1875) defrayed out of the "general district fund" which is fed from the "general district rate." The general district rate is leviable upon all kinds of property in the district which are assessable to the poor rate; but tithes, arable, meadow or pasture ground, woodlands, market-gardens, or nursery grounds, land covered with water, canals, and railways are assessed at only one-fourth of their value. See ss. 207—212 of the Public Health Act, 1875. The expenses of the metropolitan borough councils are payable out of the general rate, the incidence of which corresponds with that of the poor rate. See London Government Act, 1899, s. 10 (1). The consolidated rate in the City of London is an equal rate in the pound over the whole city. It is not now levied *eo nomine*, but forms part of the general rate levied in the City.

Precepts by Board.

(3) The Water Board shall issue precepts for the sums apportioned to the City and the several boroughs and districts liable—

(*a*) in the case of the City of London, to the common council;

(*b*) in the case of a metropolitan borough, to the council of that borough;

(*c*) in the case of a municipal borough or urban district, to the council thereof;

and the council shall pay to the Water Board the amount specified in the precept.

Rates.

(4) The amount required by any such precept shall be paid—

(*a*) in the case of the city out of the consolidated rate ;

(*b*) in the case of a metropolitan borough as part of the expenses incurred by the council thereof ;

(*c*) in the case of a municipal borough or urban district out of the fund or rate out of which the expenses of the council thereof incurred in the execution of the Public Health Acts are payable.

(5) A demand note for any rate levied for defraying any expenses of the Water Board, together with other expenses, shall state as a separate item the amount to be paid for defraying the expenses of that Board.

(6) The Water Board shall not, until Parliament otherwise determine reduce the rates charged for the supply of water below those in force during the quarter ending the twenty-fourth day of June one thousand nine hundred and two, unless the Board are satisfied that such a reduction would not cause a deficiency in the water fund ; but the Water Board shall, within three years after the appointed day, introduce into Parliament a Bill providing for uniform scales of charges applicable throughout the limits of supply.

In their Fourth Annual Report the Metropolitan Water Board made the following observations on the statutory direction contained in this subsection:

"The statutory direction raised numerous difficulties, arising mainly out of:—

"(i.) The varying scales of charges of the several Water Companies for the supply of water for domestic purposes ;

"(ii.) The existence of extras of different kinds ;

"(iii.) The varying statutory scales, and the varying practices where there were no statutory scales, for the supply of water for other than domestic purposes, including trade supplies, public services, and the peculiar difficulties presented by the important class of property where supply is partly domestic and partly for purposes other than domestic ; and

"(iv.) The difference in the basis of the domestic charge within and without the Administrative County of London, where in the former case the Companies and the Board were bound by the "rateable value" as determined and applied by the Valuation Metropolis Act, 1869, and the Water Rate Definition Act, 1885, respectively ; and, in the other case, where the Board were free to exercise their power to ascertain the "annual value" (irrespective of the parochial valuation) under the general authority of the Water Works Clauses Act, 1847."

In pursuance of the direction the Board promoted a Bill in Parliament in 1907, and the Bill became law under the title "Metropolitan Water Board (Charges) Act, 1907." This Act is set out *in extenso*, *post*, p. 684.

By. s. 34 of the Metropolitan Water Board (Charges) Act, 1907, it is provided that "So much of subs. 6, [*supra*,] as relates to the reduction of the rates charged for the supply of water below those in force during the quarter ending June 24th, 1902, shall cease to have effect."

NOTE.

(7) Within three years after the appointed day the Water Board may prepare and publish in the London Gazette a scheme enabling their charges for the supply of water to be collected together with any local rate.

Any local or rating authority within the limits of supply may transmit to the Local Government Board their objections to any such scheme within forty days after the scheme is published in the London Gazette.

By s. 34 of the Metropolitan Water Board (Charges) Act, 1907, it is provided that the above subsection shall be read and have effect as if the words "within three years after the appointed day" had been omitted therefrom.

Powers of borrowing.

16.—(1) The Water Board may borrow money for the purpose of—

(*a*) paying any money (other than money payable by way of interest on purchase money) payable under this Act by the Water Board to a metropolitan water company ; and

(*b*) paying any money payable under this Act by the Water Board to the council of the urban district of Tottenham or Enfield ; and

(*c*) purchasing, redeeming, or paying off any debenture stock or mortgage debt ; and

(*d*) executing any work authorised by the Acts relating to any of the metropolitan water companies, so that the amount does not exceed the amounts which were immediately before the appointed day under those Acts authorised to be raised for that purpose, but have not been raised before that date ; and

(*e*) paying any compensation payable under this Act (otherwise than by way of annuity) ;

and, with the consent of the Local Government Board, for the purpose of any payment by the Water Board or of any permanent work or other thing which the Water Board are authorised to execute or do, and which or the cost of which ought, in the opinion of the Local Government Board, to be spread over a term of years.

(2) All money borrowed under this section shall be raised by means of the issue of water stock under this Act, unless the Local Government Board consent to some other mode of raising the money, and, where the Local Government Board so consent, any money raised and the interest thereof shall be charged on the water fund or on such property or revenues of the Water Board, and in such manner as the Local Government Board may sanction.

(3) Any money borrowed under this Act, if borrowed for the purpose of making any payment to a metropolitan water company, or to the council of the urban district of Tottenham or Enfield, or of redeeming purchasing, or paying off any debenture stock or mortgage debt, shall be repaid within the period of one hundred years from the 31st day of

March one thousand nine hundred and three, and, if borrowed for any other purpose, shall be repaid within such period not exceeding sixty years from the date of the borrowing as the Water Board, with the consent of the Local Government Board, may determine.

(4) For the purpose of paying off a loan raised under this Act, the Water Board shall have the like powers of reborrowing as a county council have under section sixty-nine of the Local Government Act, 1888, and the provisions of that section so far as they relate to reborrowing shall apply as if they were herein re-enacted and in terms made applicable to the Water Board and to the security on which that Board are by or under this Act authorised to borrow.

51 & 52 Vict c. 41.

(5) So much of any Local Act as relates to the method of borrowing money by a metropolitan water company shall as from the appointed day be repealed.

The Water Board went to Parliament in 1906 and obtained the Metropolitan Water Board Act, 1906, the provisions of which were summarised in their Third Annual Report as follows:—"By s. 6 it authorises the Board from time to time to borrow moneys (in addition to any borrowing powers given by the Companies' Acts) *inter alia* for the completion of the Honor Oak Reservoir not exceeding £180,000, and, with the sanction of the Local Government Board, such further sums as may be required for the purposes of the Act.

Provision is made for the formation, maintenance and application of a Sinking Fund, and for the increase, reduction or discontinuance of payments to such Sinking Fund under such circumstances as would meet the approval of the Local Government Board. Power is also taken by s. 11 to re-borrow, and by s. 17 all moneys from time to time borrowed or reborrowed under the Act shall be applied by the Board only for the purposes for which the same were authorised, except that excess borrowing or re-borrowing shall be applied in such a manner as the Board with the approval of the Local Government Board may determine.

The Board is also enabled to raise money under the Act by the creation and issue of additional amounts of Metropolitan Water Stock, and ss. 17 and 18 of the Act of 1902 and the Water Stock Regulations made by the Local Government Board thereunder are applied accordingly.

An important power is also given authorising the Board subject to certain terms and conditions to raise from time to time by the issue of Bills any moneys which they are for the time being authorised to borrow or to raise by the creation or issue of Stock.

Bills issued by the Board shall be called "Metropolitan Water Board Bills," and may be offered for purchase by tender in such manner and on such conditions and after public advertisement, as the Board may determine. Each Bill shall be for the amount directed by the Board not being less than £500, and shall be issued under the authority of a warrant sealed by the Board. Regulations are to be made by the Board with respect to the preparation, form, mode of issue, and payment, cancellation, substitution and discharge of money Bills."

Issue of water stock.

17.—(1) For the purpose of enabling the Water Board to raise money which they are authorised to borrow under this Act, and to issue any water stock which, under the provisions of this Act, is to be issued to any metropolitan water company or the holder of any debenture stock or mortgage debt, the Water Board may create a sufficient amount of stock, to be called Metropolitan Water Stock, and in this Act referred to as water stock, bearing interest at such a rate not exceeding three pounds

Sect. 17. per centum per annum, as the Water Board, with the consent of the Local Government Board, and after consultation with the Governor of the Bank of England, may resolve.

(2) Water stock and the interest thereon shall be charged on the water fund and on all the revenues of the Water Board.

53 & 54 Vict. c. 59.

(3) Subject to the provisions of this Act, the provisions of section fifty-two of the Public Health Acts Amendment Act, 1890, which relates to the issue of stock by local authorities, shall apply to water stock as if it were stock created under, and the Water Board were an authority mentioned in, that section, and the regulations in respect of water stock issued to the holders of irredeemable debenture stock shall be uniform with the regulations in respect of other water stock except as to the period of redemption and the provisions relating thereto.

56 & 57 Vict. c. 53.

(4) Water stock shall be included amongst the securities in which a trustee may invest under the powers of the Trustee Act, 1893.

Section 52 of the Public Health Acts Amendment Act, 1890, provides as follows:—

> (1) Where any authority, whether a municipal corporation, local board, or improvement commissioners, which is an urban authority, have for the time being, either in their capacity as urban authority or in any other capacity, any power to borrow money, they may, with the consent of the Local Government Board, exercise such power by the creation of stock to be created, issued, transferred, dealt with, and redeemed in such manner and in accordance with such regulations as the Local Government Board may from time to time prescribe.
>
> (2) Without prejudice to the generality of the above power, such regulations may provide for the discharge of any loan raised by such stock, and in the case of consolidation of debt for extending or varying the times within which loans may be discharged, and may provide for the consent of limited owners and for the application of the Acts relating to stamp duties and to cheques, and for the disposal of unclaimed dividends, and may apply for the purposes of this section, with or without modifications, any enactments of the Local Loans Act, 1875, and the Acts amending the same, and of any Act relating to stock issued by the Metropolitan Board of Works, or the County Council of London, or by the corporation of any municipal borough.
>
> (3) Such regulations shall be laid before each House of Parliament for not less than thirty days during which such House sits, and if either House during such thirty days resolves that such regulations ought not to be proceeded with, the same shall be of no effect, without prejudice nevertheless to the making of further regulations.
>
> (4) If no such resolution is passed, it shall be lawful for her Majesty by Order in Council to confirm such regulations, and the same when so confirmed shall be deemed to have been duly made and to be within the powers of this Act, and shall be of the same force as if they were enacted in this Act.

The Metropolitan Water Stock Regulations were made in 1903. They are set out at p. 662, *post*.

Provisions as to discharge of loans, etc.

18.—(1) The Water Board shall, in accordance with regulations made by the Local Government Board, by the creation of one or more sinking or redemption funds or otherwise, make provision for—

(*a*) the discharge within a period of one hundred years from the thirty-first day of March one thousand nine hundred and three of the amount of any water stock issued by the Board in consideration for the undertaking of any metropolitan water company or in substitution or in consideration for any debenture stock or mortgage debts; and **Sect. 18.**

(*b*) the discharge within that period of all debenture stock and mortgage debts which under this Act are to be discharged within that period; and

(*c*) the discharge within the periods within which they are under this Act to be discharged of any sums borrowed by the Water Board under this Act:

Provided that during the first twenty years of the said period of one hundred years the Water Board shall not be required to make any payments towards the discharge of water stock, debenture stock mortgage debts, or loans, for the discharge of which the said period of one hundred years is fixed by this Act, other than the payment in respect of each year towards the discharge of such water stock of the amount (if any) by which the receipts on revenue account exceed the expenditure on that account of the Water Board in that year, after deducting such sum as may be reasonably necessary for meeting current expenses. The sums so to be paid shall be paid as soon as may be after the amount thereof is ascertained, and the certificate of the auditor of the accounts of the Water Board, subject to such variations as the Local Government Board may allow, shall be conclusive as to the amount to be paid.

(2) The Local Government Board may make regulations under this section, and the regulations so made—

(*a*) if they relate to the discharge of water stock, shall be made under section fifty-two of the Public Health Acts Amendment Act, 1890, as applied by this Act; and 53 & 54 Vict. c. 59.

(*b*) if they relate to the discharge of any debenture stock, mortgage debts, or loans, may apply, with or without modifications, any enactments of the Local Loans Act, 1875, and the Acts amending that Act, and may contain such other provisions as appear to the Local Government Board necessary or proper for the purpose of the regulations, and shall have effect as if they were enacted in this Act. 38 & 39 Vict. c. 83.

(3) For the purpose of this section, the expression "discharge" means—

(*a*) with respect to water stock and debenture stock, the redemption or purchase thereof; and

(*b*) with respect to mortgage debts and loans, the payment off or repayment thereof.

The regulations made by the Local Government Board for the purposes of this section are contained in the Regulations set out at p. 662, *post*.

19. The accounts of the Water Board, and any committee appointed by them, and of their officers, shall be made up and audited in like Accounts and audit.

Sect. 19. manner, and subject to the same provisions, as the accounts of county councils, except that a water consumer shall have the same right of being present at the audit, and of making objections and appealing, as a ratepayer has, and that the stamp duty charged on the Water Board for the purposes of the District Auditors Act, 1879, shall be such as the Treasury, after consultation with the Local Government Board, and having regard to the cost of the audit, may determine, and the enactments relating to the accounts of county councils and the audit thereof, and to all matters incidental thereto and consequential thereon, including the penal provisions, shall apply accordingly.

It is by s. 71 of the Local Government Act, 1888, provided that the accounts of a county council and of the county treasurer and officers of the council shall be audited by the district auditors appointed by the Local Government Board in like manner as accounts of an urban authority and their officers under ss. 247 and 250 of the Public Health Act, 1875. Those sections, in so far as they are unrepealed, are as follows:—

> **247.** Where an urban authority are not the council of a borough the following regulations with respect to audit shall be observed; (namely,)
>
> (1) The accounts of the receipts and expenditure under this act of such authority shall be audited and examined once in every year, as soon as can be after the 25th day of March, by the auditor of accounts relating to the relief of the poor.
>
> (3) Before each audit such authority shall, after receiving from the auditor the requisite appointment, give at least fourteen days' notice of the time and place at which the same will be made, and of the deposit of accounts required by this section, by advertisement in some one or more of the local newspapers circulated in the district; and the production of the newspaper containing such notice shall be deemed to be sufficient proof of such notice on any proceeding whatsoever:
>
> (4) A copy of the accounts duly made up and balanced, together with all rate books, account books, deeds, contracts, accounts, vouchers, and receipts mentioned or referred to in such accounts, shall be deposited in the office of such authority, and be open, during office hours thereat, to the inspection of all persons interested for seven clear days before the audit, and all such persons shall be at liberty to take copies of or extracts from the same, without fee or reward; and any officer of such authority duly appointed in that behalf neglecting to make up such accounts and books, or altering such accounts and books, or allowing them to be altered when so made up, or refusing to allow inspection thereof, shall be liable to a penalty not exceeding five pounds:
>
> (5) For the purpose of any audit under this act, every auditor may, by summons in writing, require the production before him of all books, deeds, contracts, accounts, vouchers, receipts, and other documents and papers which he may deem necessary, and may require any person holding or accountable for any such books, deeds, contracts, accounts, vouchers, receipts, documents, or papers to appear before him at any such audit or any adjournment thereof, and to make and sign a declaration as to the correctness of the same; and if any such person neglects or refuses so to do, or to produce any such books, deeds, contracts, accounts, vouchers, receipts, documents, or papers, or to make or sign such declaration, he shall incur for every neglect or refusal a penalty not exceeding forty shillings; and if he falsely or corruptly makes or signs any such declaration, knowing the same to be untrue in any material particular, he shall be liable to the penalties inflicted on persons guilty of wilful and corrupt perjury:

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Note.

(6) Any ratepayer or owner of property in the district may be present at the audit, and may make any objection to such accounts before the auditor; and such ratepayers and owners shall have the same right of appeal against allowances by an auditor as they have by law against disallowances:

(7) Any auditor acting in pursuance of this section shall disallow every item of account contrary to law, and surcharge the same on the person making or authorizing the making of the illegal payment, and shall charge against any person accounting the amount of any deficiency or loss incurred by the negligence or misconduct of that person, or of any sum which ought to have been but is not brought into account by that person, and shall in every such case certify the amount due from such person, and on application by any party aggrieved shall state in writing the reasons for his decision in respect of such disallowance or surcharge, and also of any allowance which he may have made:

(8) Any person aggrieved by disallowance made may apply to the court of queen's bench for a writ of certiorari to remove the disallowance into the said court, in the same manner and subject to the same conditions as are provided in the case of disallowances by auditors under the laws for the time being in force with regard to the relief of the poor; and the said court shall have the same powers with respect to allowances, disallowances, and surcharges under this act as it has with respect to disallowances or allowances by the said auditors; or in lieu of such application any person so aggrieved may appeal to the local government board, which board shall have the same powers in the case of the appeal as it possesses in the case of appeals against allowances, disallowances and surcharges by the said poor law auditors:

(9) Every sum certified to be due from any person by an auditor under this act shall be paid by such person to the treasurer of such authority within fourteen days after the same has been so certified, unless there is an appeal against the decision; and if such sum is not so paid, and there is no such appeal, the auditor shall recover the same from the person against whom the same has been certified to be due by the like process and with the like powers as in the case of sums certified on the audit of the poor rate accounts, and shall be paid by such authority all such costs and expenses, including a reasonable compensation for loss of time incurred by him in such proceedings, as are not recovered by him from such person:

(10) Within fourteen days after the completion of the audit, the auditor shall report on the accounts audited and examined, and shall deliver such report to the clerk of such authority, who shall cause the same to be deposited in their office, and shall publish an abstract of such accounts in some one or more of the local newspapers circulated in their district.

Where the provisions as to audit of any local act constituting a board of improvement commissioners are repugnant to or inconsistent with those of this act, the audit of the accounts of such improvement commissioners shall be conducted in all respects in accordance with the provisions of this act.

250. The accounts under this act of officers or assistants of any local authority who are required to receive moneys or goods on behalf of such authority shall be audited by the auditors or auditor of the accounts of such authority, with the same powers, incidents, and consequences as in the case of such last-mentioned accounts.

Provisions as to payment

20.—(1) At the beginning of every financial year the Water Board shall cause to be submitted to them an estimate of the receipts and

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by the Water Board.

expenditure of such Board during that financial year whether on account of property, contributions, rates, loans, or otherwise.

(2) All payments to and out of the water fund shall be made to and by the treasurer of the Water Board, and all payments out of the fund shall be made in pursuance of an order of the Water Board signed by three members of the finance committee present at the meeting of the Board and countersigned by the Clerk of the Board, and the same order may include several payments.

Moreover all cheques for the payment of money issued in pursuance of such order shall be countersigned by the clerk of the Board, or by a deputy approved by the Board.

(3) The Water Board shall from time to time appoint a finance committee for regulating and controlling their finance, and an order for the payment of a sum out of the water fund whether on account of capital or income shall not be made by the Water Board except in pursuance of a resolution of the Board passed on the recommendation of the finance committee, and any costs debt or liability exceeding fifty pounds shall not be incurred except upon a resolution of the Board passed on an estimate submitted by the finance committee.

(4) The notice of the meeting at which any resolution for the payment of a sum out of the water fund (otherwise than for ordinary periodical payments), or any resolution for incurring any costs debt or liability exceeding fifty pounds, will be proposed, shall state the amount of the said sum, costs, debt, or liability and the purposes for which they are to be paid or incurred.

Powers of certain local authorities to borrow.

21.—(1) The payment of any money payable by a local authority to the Water Board in respect of any waterworks and plant transferred to the authority by or under this Act or in respect of the right to supply water within any part of the area of the authority shall for purposes of borrowing be deemed to be expenses incurred by the authority in the execution of the Public Health Acts.

(2) The amount of money to be borrowed shall not be restricted by the limitation on borrowing contained in subsections (2) and (3) of section two hundred and thirty-four of the Public Health Act, 1875, and in calculating the amount which the local authority may borrow under the last-mentioned Act any money borrowed by the authority for the purpose of this Act shall not be reckoned.

Application of capital receipts.

22. Any money received by the Water Board from the Chamberlain of the City of London under this Act, or in respect of any waterworks and plant transferred from the Board by or under this Act, or as the proceeds of the sale of any land under this Act, and any other capital receipts of the Board, not applicable to any other purpose, shall be applied in such manner as the Local Government Board sanction towards any purpose for which money may be borrowed under this Act, or towards the discharge of any loan, or otherwise for any purpose for which capital money may be applied by the Water Board.

23.—(1) For the purpose of arbitrations under this Act a Court of Arbitration shall be constituted consisting of three commissioners, and the Right Honourable Sir Edward Fry, Sir Hugh Owen, G.C.B., and Sir John Wolfe Barry, K.C.B., shall be the commissioners.

Arbitration by Sir E. Fry, Sir H. Owen, and Sir J. W. Barry.

(2) If any vacancy in the Court of Arbitration occurs by reason of death, resignation, or incapacity, or otherwise, the Lord Chief Justice of England shall appoint a person to fill the vacancy, and so from time to time as occasion requires.

Officers.

(3) The Court of Arbitration may appoint or employ such number of officers and persons as they may think necessary for the purpose of assisting in the execution of their duties under this Act, and may remove any officer or person so appointed or employed, and for the purpose of obtaining any information which the Court may require may direct any commissioner or any such officer or person to hold an inquiry. But nothing in this Act shall authorise the commissioners to delegate any of their judicial duties as arbitrators.

(4) There shall be paid to the commissioners and to any officer or person appointed or employed under this section, such salaries or other remuneration as the Local Government Board may assign, and that remuneration, and all expenses of the Court of Arbitration incurred with the sanction of the Local Government Board in the execution of this Act, shall be paid by the Water Board.

Finality of settlement.

(5) Subject to the provisions of this section, the authority of the Court of Arbitration shall extend to the settlement and the determination by them, on such terms and in such manner as is most just and fit, of the matters referred to them, and also of all such matters and questions (including any adjustment of accounts between the parties to the arbitration) as are, in their judgment, incidental thereto, or consequential thereon, to the end that their award or awards may effect a final and equitable settlement.

(6) Every award, order and other instrument made by or proceeding from the Court of Arbitration under this Act shall be binding and conclusive to and for all intents and purposes and shall have the like effect as if it had been made by a Judge of the High Court and shall be acted on, obeyed, executed, and enforced accordingly.

The Court may make one or more awards dealing with the matters referred to them.

Case on law for Court of Appeal.

The Court of Arbitration may state their award, or any part thereof, in the form of a special case for determination by the Court of Appeal, and may at any stage in the proceedings at an arbitration, and shall, if so directed by the Court of Appeal, state in the form of a special case for determination by the Court of Appeal any question of law arising in the course of the arbitration, and an appeal shall, with the leave of the Court of Appeal, but not otherwise, lie from the Court of Appeal to the House of Lords, but subject to any order made by the House of Lords in accordance with the Appellate Jurisdiction Act, 1876, every such appeal shall be brought within two months after the decision appealed against is pronounced by the Court of Appeal if the House of Lords is then sitting, or, if not, within fourteen days after the House of Lords next sits. The Court of Arbitration shall act in accordance with the decision arrived at in any such case.

Court may act by two.

(7) The Court of Arbitration may act by two of their number, and notwithstanding any vacancy in their number. Subject as aforesaid, the Court may regulate their own procedure, and the procedure at an inquiry held under this section.

No allowance for compulsory sale.

(8) In fixing the sum to be paid by the Water Board as hereinbefore provided, the Court of Arbitration shall determine the value of the undertaking of each metropolitan water company as if with the necessary modifications the law of compensation for the purposes of the Lands Clauses Acts were applicable to the case: Provided that the Court shall not make any allowance for compulsory sale, and shall not take into account any enhancement or depreciation of the market value of any stock or shares of the Company, which in the opinion of the Court was caused by or resulted from the passing or the anticipation of the passing of this Act, but the Court may make such allowance as they think just for recoupment of any loss of interest pending re-investment, as well as for the cost of re-investment, and for covering any costs, charges, and expenses (other than costs incurred in any arbitration under this Act) which have been or are likely to be incurred in consequence of the passing of this Act by any metropolitan water company or the shareholders or stockholders therein, and which ought, in the opinion of the Court, to be borne by the Water Board.

(9) The costs of any metropolitan water company incurred in an arbitration under this Act shall, except and so far as the Court of Arbitration otherwise determine, be borne by the Water Board, and the costs of any other person attending an arbitration under this Act shall be in the discretion of the Court of Arbitration, and that Court may order the taxation of any costs in such manner and on such scale or principle as they may think fit. And the costs of and incidental to any proceedings in the Court of Appeal, and the statement of a case under this section, shall be in the discretion of the Court of Appeal.

(10) The provisions of the Arbitration Act, 1889, relating to—

(*a*) The administration of oaths and the taking of affirmations; and

(*b*) The correction in an award of mistakes and errors; and

(*c*) The summoning attendance and examination of witnesses and the production of documents; and

(*d*) False evidence

shall apply to arbitrations under this Act and also (except with regard to the correction of mistakes and errors in awards) to inquiries held under this section; but, save as aforesaid, the Arbitration Act, 1889, shall not apply to arbitrations under this Act.

(11) The Court of Arbitration shall commence their sittings within nine months after the passing of this Act and shall proceed with the arbitrations so as to make as far as possible all their awards before the appointed day.

The Court of Arbitration set up by this section has long since completed all the work which arose for its consideration, and has therefore ceased to exist.

Decisions upon special cases stated by the Court (*Chelsea Waterworks Co.* v. *Metropolitan Water Board; In re New River Co. and Metropolitan Water Board*, and *East London Waterworks Co.* v. *Metropolitan Water Board*) have been noticed in this work in the places which appeared to be appropriate.

MISCELLANEOUS.

Subsidiary powers of Water Board.

24.—(1) The Water Board shall, for the purposes of their powers and duties under this Act or otherwise with respect to the supply of water within the limits of supply, have power—

(*a*) to manage, alter, enlarge, and, with the consent of the Local Government Board, to alienate, any land or buildings transferred to them under this Act or otherwise vested in the Water Board; and

(*b*) to acquire, hire, erect, and furnish such buildings and offices as they may require, whether within or without the limits of supply, and for that purpose to acquire purchase or take on hire or exchange land: Provided that nothing in this section shall authorise or empower the Board to acquire any waterworks or wells or to use any lands or any easements or any rights in or over lands acquired under the powers of this section for the purpose of obtaining water for public supply; and

(*c*) to promote or oppose any Bill in Parliament and prosecute or defend legal proceedings.

(2) For the purposes of this section, sections one hundred and seventy-six, one hundred and seventy-seven, and one hundred and seventy-eight of the Public Health Act, 1875, shall, except so far as they relate to the acquisition of land otherwise than by agreement, apply as if they were herein re-enacted and in terms made applicable to the Water Board.

(3) The clerk of the Water Board or any officer or member thereof acting under a general or special resolution of the Board may authorise the institution and carrying on or the defence of any proceeding which the Board are authorised to institute, carry on, or defend. Any information or complaint under the provisions of this Act or any other Act whether local or general, applying to the undertakings of the metropolitan water companies or of the Water Board, or any byelaws or regulations

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made thereunder, may be laid or made by an officer or member of the Water Board or by the clerk.

(4) The Superannuation (Metropolis) Act, 1866, shall apply to the Water Board as if the Board were an authority mentioned in that Act.

Sects. 176—178 of the Public Health Act, 1875, are set out *in extenso* at pp. 881 *et seq.*, *post.*

The Superannuation (Metropolis) Act, 1866, empowers the authorities therein mentioned to grant upon resignation to officers (including the chairman of the Metropolitan Board of Works) who have become incapable of discharging their duties by reason of permanent infirmity or old age (not less than 60), an annual allowance not exceeding two-thirds of the then salary of any officer. Regard is to be had to a scale of allowances which is set out in the Act. The scale prescribes an allowance of $\frac{10}{60}$th of his salary for an officer with ten years' service, with an addition of $\frac{1}{60}$th in respect of each additional year of service. Provision is made for adding, in computing the allowance, a number of years (not more than ten) to the number of years actually served in the case of an officer for the due discharge of the duties of whose office professional or other peculiar qualifications are required. The Act also empowers the granting of gratuities to persons compelled to quit their service by reason of bodily injuries occasioned in the discharge of their duties, or of infirmity of body or mind. See as to officers of the Metropolitan Water Companies, s. 47 (8) (10), *post*, p. 629.

Chemical and bacteriological examinations and experiments.

25.—(1) The Water Board shall cause to be made chemical and bacteriological examinations of and experiments as to the condition of the water to be supplied by them.

(2) The Water Board shall supply such buildings, apparatus, and plant, and such staff, and construct such works as may be required for enabling such examinations and experiments to be conducted efficiently.

(3) The persons employed by the Water Board to make examinations and experiments under this section shall periodically report to the Water Board the result of their examinations and experiments, and a copy of the report shall at the same time be sent to the water examiner.

(4) The Water Board shall take and record such observations as may be required by the Local Government Board.

(5) The water examiner shall, at all reasonable times, have free access to the works of the Water Board for the purpose of inspecting those works, and shall have all proper facilities for making such inspection.

The water examiner here referred to is appointed under s. 36 of the Metropolis Water Act, 1871, *ante*, p. 570.

Powers of the Local Government Board to make provisional orders for certain purposes.

26.— (1) If at any time by reason of the variation of population or the constitution or inclusion within the limits of supply of any borough or urban district it is proved to the satisfaction of the Local Government Board that the representation on the Water Board of any borough or district ought to be varied or that any borough or urban district within the limits of supply ought to be represented on the Water Board, the Local Government Board may make an order altering the representation of boroughs and urban districts and may by any such order alter the total number of members of the Board.

(2) The Local Government Board may by order on the application of

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the Water Board, include within the limits of supply any district which, having, as a rural district or as a part thereof, ceased to be within the limits of supply, has subsequently been made an urban district.

(3) The Local Government Board may by order make such adaptations in the provisions of any general or local Act relating to the metropolitan water companies or any of them as may be necessary in consequence of the passing of this Act.

(4) An order under this section may contain any incidental, consequential or supplemental provisions which may appear to be necessary or proper for the purposes of the order, but shall be provisional only and shall not have effect unless confirmed by Parliament, and sections two hundred and ninety-seven and two hundred and ninety-eight of the Public Health Act, 1875, shall, with the necessary modifications, apply to provisional orders under this section in like manner as they apply to provisional orders authorised to be made by the Local Government Board under that Act.

Sects. 297 and 298 of the Public Health Act, 1875, are set out *in extenso* at pp. 898 *et seq.*, *post.*

Provisions as to local inquiries.

27.—(1) The Local Government Board may hold such local inquiries as they think fit in relation to any matters to which their sanction, approval, or consent is required by this Act, and in relation to any other matters connected with their powers and duties under this Act.

(2) The expenses incurred by the Local Government Board in respect of any such inquiries and any other proceedings for the purposes of this Act shall be paid by the Water Board or by such authorities and persons and out or such funds and rates as the Local Government Board may by order direct, and that Board may certify the amount of the expenses so incurred, and any sum so certified and directed by that Board to be paid by the Water Board or by any authority or person shall be a debt from the Water Board, or from that authority or person, to the Crown.

(3) Such expenses may include the salary of any inspector or officer of the Local Government Board engaged in the inquiry or proceeding, not exceeding three guineas a day.

(4) The Local Government Board and their inspectors appointed by them to hold such inquiry as aforesaid shall have for the purposes of the inquiry the same powers as they respectively have for the purposes of an inquiry under the Public Health Act, 1875.

By s. 296 of the Public Health Act, 1875, it is provided as follows:—

> "Inspectors of the Local Government Board shall, for the purposes of any inquiry directed by the Board, have in relation to witnesses and their examination, the production of papers and accounts, and the inspection of places and matters required to be inspected, similar powers to those which poor law inspectors have under the Acts relating to the relief of the poor for the purposes of those Acts."

10 & 11 Vict. c. 109, ss. 20, 21, contain the provisions as to the powers of poor law inspectors. Under these sections an inspector may summon any person to be examined before him, or to produce and verify on oath any books, contracts, agreements, accounts, or copies of the same, and not relating

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NOTE.

to or involving any question of title to land (except the property of the local authority). He may examine witnesses on oath or require the party examined to make and subscribe a declaration of the truth of his evidence. Disobedience of any summons, refusing to produce, altering, or concealing any books, etc., are misdemeanors, and evidence falsely given before the inspector is perjury.

Annual report.

28. The Water Board shall make to the Local Government Board an annual report of their proceedings, and this report shall be laid annually before Parliament by the Local Government Board. The Water Board shall also give to the Local Government Board such returns statistics, and information, with respect to the exercise of the powers of the Water Board, as the Local Government Board may require.

The Metropolitan Water Board and their officers are to be congratulated upon the six annual reports which have already been made, and the editor of this work desires to acknowledge his indebtedness for the use which he has made of portions thereof.

Dissolution of water companies.

29.—(1) As soon as the compensation due to any metropolitan water company shall have been duly paid or satisfied to such company in accordance with this Act, the company shall enter upon a liquidation of its affairs, and upon the conclusion thereof be dissolved in manner provided with respect to the company in the Fourth Schedule to this Act.

This sub-section shall not apply to the New River Company or to the Staines Reservoirs Joint Committee.

The New River Company and the Staines Reservoirs Joint Committee have already been dealt with by ss. 9 (8) and 10 respectively.

(2) The several provisions and powers contained in the several special Acts of the metropolitan water companies shall remain and be of full force as regards the companies respectively, so far as the same are necessary or required for the purposes of any company up to and until the dissolution thereof:

Provided always that it shall not be obligatory to fill up any vacancy in the office of director occurring after the appointed day and it shall be lawful for the continuing directors for the time being of each company to exercise all powers of directors up to and until the dissolution of the company.

Provision as to qualification of justices.

30. A justice of the peace shall not be incapable of acting in any case in which the Water Board are a party by reason only that as a ratepayer, water consumer, or holder of water stock or debenture stock, or as one of any other class of persons, he is liable to contribute to, or to be benefited by, the water fund.

See as to the disqualification from interest which would have arisen but for this section the note at p. 160.

SAVINGS.

Saving of right of authorities to be heard against Bills.

31. Nothing in this Act shall affect the right of any council or other authority represented on the Water Board to be heard against any Bill or Provisional Order promoted or applied for by the Water Board.

See as to the *locus standi* of local authorities, the Standing Orders 134, 134 a, 134 b, and 134 c, set out at p. 1031, *post*.

Note.

Saving for the Colne Valley Water Company.

32. Notwithstanding anything in this Act it shall not be lawful for the Water Board without the authority of Parliament to supply water in that part of the parish of Hendon which under the Colne Valley Water Act, 1873, is within the limits of supply of the Colne Valley Water Company.

See hereon, note (*f*) on p. 661, *post*.

Saving for the South West Suburban Water Company.

33. Nothing contained in or done under this Act shall prejudice or affect any agreement between the South West Suburban Water Company and any metropolitan water company or any local authority or person made prior to the passing of this Act, for a supply of water within the statutory district of the South West Suburban Water Company, or shall authorise the Water Board to supply water within the limits of supply of the South West Suburban Water Company as defined by section four of the South West Suburban Water Act, 1883, except in pursuance of any such agreement.

See hereon note (*g*), on p. 661, *post*.

Saving for the Sutton District Water Company.

34. The provisions of this Act shall not empower the Water Board or any local authority to supply water within the limits for the supply of water of the Sutton District Water Company, as defined by the Sutton District Waterworks Act, 1871, except so much thereof as was on the twenty-fifth day of March one thousand nine hundred and two supplied by the Company of Proprietors of Lambeth Waterworks.

See hereon note (*i*), on p. 661, *post*.

Saving for the Barnet District Gas and Water Company.

35.—(1) The Water Board shall not be entitled to supply water within so much of the urban district of Enfield as is comprised within the statutory limits of the Barnet District Gas and Water Company for the supply of water, but this restriction shall apply only if and so long as that company are able and willing to supply water proper and sufficient for all reasonable purposes for which it is required by the Enfield Urban District Council, and the provisions as to the settlement of differences under section fifty-two of the Public Health Act, 1875, shall apply.

See hereon note (*e*), on p. 660, *post*.

(2) The provisions of this Act shall not empower the Water Board to supply water (unless with the consent of the Barnet District Gas and Water Company) within any part of the statutory limits of that company for the supply of water in which a metropolitan water company were not authorised to supply water, except to such premises as at the appointed day may be actually supplied by the New River Company.

See hereon note (*c*), on p. 660, *post*.

Saving for the South Essex Waterworks Company.

36. Notwithstanding anything in this Act it shall not be lawful for the Water Board to extend their supply of water, whether in bulk or otherwise, to or within so much of the Romford Rural District as is

Sect. 36. comprised within the statutory limits of the South Essex Waterworks Company, but this restriction shall apply only if and so long as that company are able and willing to supply water proper and sufficient for all reasonable purposes for which it is required by the Romford Rural District Council, and the provisions relating to the settlement of differences under section fifty-two of the Public Health Act, 1875, shall apply.

See hereon note (*a*), on p. 660, *post*.

DEFINITIONS: REPEAL: SHORT TITLE.

Definitions.

37. In this Act, unless the context otherwise requires,—

"Constituent authority."

The expression "constituent authority" means a council, group of councils, or other body entitled to appoint one or more members of the Water Board:

The councils, groups of councils and other bodies entitled to appoint members are specified in s. 1 (3), *ante* p. 596.

"Undertaking."

The expression "undertaking" includes, in the case of any metropolitan water company, all rights of taking, distributing, and supplying water, and all other their rights, powers, authorities, and privileges, and all such property, real and personal, including cash balances, reserve funds, investments, and all other interests and rights in, to, and out of the property, real and personal, and obligations, and things in action, as may be in the possession of the company, or belonging to them, immediately before the appointed day, and all books, accounts, and documents relating thereto, but subject to all debts, liabilities, and obligations of the company by this Act transferred to the Water Board:

"Appointed day"—24th June, 1904, or other not earlier day.

The expression "appointed day" means the twenty-fourth day of June one thousand nine hundred and four, or such other day as the Local Government Board may appoint, either generally or with reference to any particular provision of this Act, and different days may be appointed for different purposes and different provisions of this Act, whether contained in the same section or in different sections, or for different authorities or different metropolitan water companies, but no day earlier than the said twenty-fourth day of June shall be appointed as respects any metropolitan water company, except with the consent of that company and the Water Board:

As regards the New River Co., the "appointed day" was postponed to July 25th, 1904. The appointed day in the case of the transfer to the Croydon Corporation under s. 12 of the Act was postponed to September 29th, 1904. (See Second Annual Report of Water Board, at p. 1.)

"Water consumer."

The expression "water consumer" means any person who is supplied with water by the Water Board, or who pays or is liable to pay, any money charged by that Board for or in respect of the supply of water, whether under the name of rent, rate, or otherwise:

The expression "debenture stock" means any debenture stock or debentures, the liability for which is transferred by this Act to the Water Board : "Debenture stock."

The expression "mortgage debt" means any debt secured by bond or otherwise, the liability for which is transferred by this Act to the Water Board : "Mortgage debt."

The expression "shareholder" includes, in the case of the New River Company, the owners of and persons interested in the thirty-sixth parts or shares in the Adventurers' moiety of the undertaking of the New River Company and the thirty-sixth parts or shares in the King's moiety of that undertaking. "Shareholder."

38. The enactments mentioned in the Fifth Schedule to this Act shall as from the appointed day be repealed to the extent specified in the third column of that schedule. Repeal.

39. This Act may be cited as the Metropolis Water Act, 1902. Short title.

TRANSITORY PROVISIONS.

40.—(1) Until the appointed day the undertaking of each metropolitan water company shall be maintained and carried on by the company as heretofore in the ordinary course of business, but if the Water Board think that any appointment to any office or service of the company, or any contract with respect to any matter connected with the undertaking, or any alteration in the rate of salary or wages payable to any officer or servant of the company, made by the company subsequently to the introduction of the Bill for this Act, was not reasonably necessary in the ordinary course of business of the company, they may give notice in writing to the company to that effect within three months after the appointed day : Maintenance of undertakings till "appointed day."

Provided that if the Water Board give any such notice, it shall be referred to the Court of Arbitration under this Act to determine whether or not the appointment, contract or alteration was reasonably necessary in the ordinary course of the business of the company, and that court shall determine whether and to what extent, as between the Water Board and the company, any liability arising in respect thereto is to be transferred to the Water Board, or is to continue as a liability of the company.

(2) The accounts and balance sheet of each of the metropolitan water companies up to the appointed day shall be made up and audited in like manner and with the like incidents and consequences, as nearly as may be, as if this Act had not been passed, but as soon as practicable after the appointed day; and for that purpose the provisions of the Metropolis Water Act, 1871, relating to the auditor and the audit of the accounts of the companies shall notwithstanding any repeal by this Act continue to apply; and the balance shown on the certified accounts representing profits available for immediate distribution as dividend and legally distributable as such shall, in the case of each of such

companies, be thereupon paid over by the Water Board to that company; and the accounts and balance sheet of each such company after the appointed day shall be audited by auditors appointed by the company.

(3) In determining the compensation for the transfer of the undertaking of a company, the sum payable to the company under this section shall not be valued as forming part of the undertaking.

Provisions for enabling companies to carry on the business, etc., after the appointed day.

41.—(1) For the purpose of enabling the metropolitan water companies to prepare and conduct their cases for arbitration under this Act, and to enter into agreements with the Water Board, and to discharge their liabilities, and generally to carry on the business of the companies, and to wind up their affairs and dissolve the companies—

(*a*) Any such company may after the appointed day temporarily retain for their own use such money, offices, books, accounts, and documents, and the services of such officers and servants, as may be agreed upon between the Water Board and the company, or failing agreement, be determined by the Local Government Board; and

(*b*) Any officer of and any other person authorised in that behalf by any such company shall have free access to all the works transferred to the Water Board from the company for the purpose of inspecting those works, and to all books, accounts, and documents of the company in the possession of the Water Board, for the purpose of inspecting, copying, and making extracts from the same, and shall have all proper facilities for the purposes aforesaid; and

(*c*) There shall be paid by the Water Board to each such company from time to time on account of the sum ultimately found to be due to the company from the Board, such sums as may be agreed upon between the Board and the company, or failing agreement, as may be determined by the Local Government Board.

(2) It shall be at the option of the Local Government Board to determine any matter, which by this section they are authorised to determine, as arbitrators or otherwise, and if they elect to determine the matter as arbitrators, the provisions of the Regulation of Railways Act, 1868, respecting arbitrations by the Board of Trade, and the enactments amending those provisions, shall apply as if they were herein re-enacted, and in terms made applicable to the Local Government Board and the determination of matters under this section.

31 & 32 Vict. c. 119.

Inspection of works, etc., of companies.

42. Any person authorised in that behalf by the Water Board shall have free access to the works of any metropolitan water company for the purpose of inspecting those works and to all books, accounts, and documents in the possession of the company (other than documents prepared for the purpose of an agreement or arbitration under this Act), for the purpose of inspecting, copying, and making extracts from the same, and shall have all proper facilities for the purposes aforesaid.

Payment of dividends to companies till discharge of compensation.

43.—(1) The Water Board shall, from and after the appointed day, pay by way of interest on purchase money to each metropolitan water company half-yearly until the compensation under this Act is paid or satisfied to such company a sum of money equal to the dividend on the ordinary and preference capital of the company calculated on the average rate of dividend paid thereon respectively in respect of the two half years preceding the publication of the notice for the Bill for this Act, together with, in respect of the reasonable expectations of increasing dividends (if any), such additional sums (if any) as may be agreed on or in default of agreement as may be determined by arbitration under this Act; such sum shall and may be treated by the companies respectively as profits available for dividend between the shareholders as if this Act had not been passed and may be distributed or dealt with accordingly:

Provided that—

(*a*) if the amount payable in any year under this section to any company exceeds the amount which, by reason of any limitation on the dividend of that company, would have been distributable as dividend if this Act had not been passed, the excess shall not be paid to the company; and

(*b*) if any instalment of such compensation as aforesaid is in pursuance of an interim award of the Court of Arbitration paid or satisfied to the company the sums payable under this section shall as from the date of payment or satisfaction be reduced by such an amount as may be specified in the interim award.

(2) The payments under this section shall, until the compensation as aforesaid under this Act is paid or satisfied, be payable by the Water Board at the dates on which the dividend on the ordinary and preference capital would have been distributable by the company:

Provided that if on the date at which any such sum is payable to a company it has not been determined whether any or what additional sum is payable to the company, the additional sum (if any) shall be paid as soon as the amount thereof has been so determined.

(3) In this section the expression "ordinary and preference capital" means, in the case of each company, all the capital of the company in stocks or shares, whether ordinary or preference, as the case may be, existing on the appointed day, and includes also in the case of the New River Company the shares of all the shareholders of that company.

Temporary advances.

44.—(1) With a view to supply funds to the Water Board immediately on their entering on the undertakings of the metropolitan water companies, the Water Board may obtain advances of such sums of money as they may require for meeting their obligations and carrying on their business, provided that the total amount so obtained shall not exceed five hundred thousand pounds, or such larger sum as the Local Government Board may sanction; and the sum so advanced shall be charged on the water fund; but it shall be the duty of the Water Board to repay any

Sect. 44. advance obtained under this section within five years from the date of obtaining the advance, and all interest thereon.

(2) The provisions of this Act as to borrowing, and the repayment of money borrowed shall not apply to advances under this section.

Pending proceedings and existing contracts.

45. Subject to the provisions of this Act and without prejudice to any remedy over by the Water Board against any metropolitan water company—

(*a*) if on the appointed day any proceeding or any cause of action is pending or existing by or against any metropolitan water company, the same shall not abate, be discontinued, or in any way prejudicially affected by reason of the transfer to the Water Board of the undertaking of the company or of anything in this Act, but the proceeding or cause of action may be continued, prosecuted, and enforced by or against the Water Board as it might have been by or against the company if this Act had not been passed, but not further or otherwise ; and

See *English* v. *Metropolitan Water Board,* cited at p. 419.

(*b*) all contracts, deeds, bonds, agreements, and other instruments subsisting immediately before the appointed day, and affecting any metropolitan water company, shall be of as full force and effect against or in favour of the Water Board, and may be enforced as fully and effectually as if, instead of the company, the Water Board had been a party thereto :

Provided that nothing in this section shall affect any proceeding, cause of action, contract, deed, bond, agreement, or other instrument relating solely to any landed estate, houses, or property of the New River Company, or any debts, liabilities, or obligations of the company incurred solely in respect thereof, which under the provisions of this Act, are not transferred to the Water Board.

By a deed executed in 1841, a water company covenanted that *during the continuance of the existence of the company* they would supply water to certain houses at a certain rate. It was, after the compensation had been paid and the company had been dissolved, contended that because of sub-s. (b) the Water Board was bound to perform the contract, but it was held that the sub-section deals with enforcing a contract and not with altering its terms, and that owing to the dissolution of the company, the contract could not now be enforced (*Edge* v. *Metropolitan Water Board* (1907), 71 J. P. 436).

By an agreement made on November 4th, 1902, M. agreed with the West Middlesex Water Company to pay to the company one guinea per annum for each of the twelve hydrants fixed at the King's Theatre, Hammersmith. In 1909 the Metropolitan Water Board, to whom the undertaking of the West Middlesex Water Company was transferred by the Metropolis Water Act, 1902, sued M., under the agreement of November 4th, 1902, for twelve guineas in respect of the water supply to the said hydrants for four quarters up to March 31st, 1909. The defendant contended that, having regard to the terms of the Metropolis Water Act, 1902, and of the Metropolitan Water Board (Charges) Act, 1907, the said agreement was determined by operation of law on April 1st, 1908, when the Act of 1907 came into operation. It was held that the agreement was not so determined, but was saved by s. 45 (b) of the Act of 1902, and s. 35 of the Act of 1907 (*Metropolitan Water Board* v. *Mulholland* (1909), 74 J. P. 27).

Saving for existing byelaws, etc.

46. All byelaws, rules, regulations, and scales of water charges made or enforceable by any metropolitan water company shall, so far as they are consistent with the provisions of this Act, continue in force with respect to the undertaking to which they relate, until repealed, altered, or superseded.

It was held that the Water Board were not bound to continue to consumers a rebate allowed by a water company made with a view of preventing an application to Quarter Sessions under s. 80 of the Waterworks Clauses Act, 1847 (*Chiswick U. D. C.* v. *Metropolitan Water Board* (1905), 69 J. P. 457; 3 L. G. R. 917).

Existing officers and servants.

47.—(1) Subject to the provisions of this Act every officer and servant of a metropolitan water company employed upon or in connexion with the undertaking immediately before the appointed day (in this Act referred to as "an existing officer" and "an existing servant") shall, as from the appointed day, become an officer or servant of the Water Board and shall hold his office or situation by the same tenure and upon like terms and conditions under the Water Board as he would have held the same under the company if this Act had not been passed, and while performing the same duties shall receive not less salary, wages, or pay than he would have been entitled to if this Act had not been passed.

(2) Every existing officer and existing servant shall perform such duties in connexion with the water undertaking of the Water Board as they may be required to perform by the Board.

(3) The Water Board may abolish the office or situation of any existing officer or existing servant which they deem unnecessary, and any existing officer or existing servant required to perform duties such as are not analogous, or which are an unreasonable addition to those which as an officer or servant of the company he was required to perform, may relinquish his office or service.

(4) Every existing officer or existing servant whose office is so abolished or who so relinquishes his office or service as aforesaid, or who otherwise suffers any direct pecuniary loss in consequence of this Act, shall be entitled to be paid by the Water Board compensation for such pecuniary loss, regard being had to the conditions on which his appointment was made, the nature of his office or employment, the duration of his services, and any other circumstances affecting the case.

(5) Subject to the provisions of this section, the provisions contained in section one hundred and twenty of the Local Government Act, 1888, relating to compensation to existing officers, shall apply to any claim for compensation by an existing officer or an existing servant with the substitution of references to the Water Board and water fund for references to the County Council and county fund.

(6) If within a period of five years after the appointed day the services of any existing officer or existing servant are dispensed with by the Water Board, because his services are not required, and not on account of misconduct or incapacity, or the salary of any such officer or servant is reduced on the ground that his duties have been diminished

Sect. 47. in consequence of the provisions of this Act, the officer or servant shall be deemed to have suffered direct pecuniary loss in consequence of this Act.

(7) Any person who on the appointed day is in receipt of a pension or other superannuation allowance from a metropolitan water company shall continue to receive from the Water Board the same pension or allowance unless he is guilty of grave misconduct, and any question whether he has been guilty of such misconduct shall in case of difference be determined by the Local Government Board :

Provided that if the Court of Arbitration, on the application of the Water Board, made within three months after the appointed day, determine that a grant or increase of a pension or superannuation allowance made by a company after the date of the introduction of the Bill for this Act was not in accordance with the usual practice of the company with respect to granting and increasing pensions and allowances, the Water Board shall not be liable to pay the pension or allowance or increased pension or allowance to such extent as the court may determine.

(8) In computing the time of service of any existing officer or existing servant for the purpose of determining the compensation to which he is entitled under this section, or of any annual allowance that may be awarded him by the Water Board under the provisions of the Superannuation (Metropolis) Act, 1866, as applied by this Act, the period during which he has been in the service of a metropolitan water company shall be included, and in the case of the following existing officers, viz., Isaac Adolphus Crookenden, the secretary, and William Booth Bryan, the engineer, of the East London Waterworks Company; Harry Wilkins, the secretary, and Thomas Farmer Parkes, the engineer, of the Company of Proprietors of Lambeth Waterworks, who were appointed to their office as specially qualified persons at an age exceeding that at which public service ordinarily begins, there shall be added to the number of years during which he has actually served, such number of years not exceeding twenty, as the Water Board or (on appeal) the Treasury may think just. Any such appeal to the Treasury shall be made within three months after the decision of the Water Board. The salary, compensation, or annual allowance to which James William Restler, the engineer of the Southwark and Vauxhall Water Company, may become entitled under this Act, shall be calculated on the basis of the average amount received by him during the five years next before the passing of this Act by way of emoluments, salary, and percentage on the cost of new works. The compensation or annual allowance to which Walter Hunter, the engineer of the Grand Junction Waterworks Company, may become entitled under this Act, shall be two thirds of the average amounts received by him for salary and emoluments during the five years next before the passing of this Act.

(9) If Sir William Crookes and Professor James Dewar, or either of them are, or is, immediately before the appointed day, employed in

making examinations of and experiments as to the condition of water on behalf of the metropolitan water companies, they, or he, shall as from that date be transferred to the Water Board, and shall for the purpose of compensation be deemed existing officers or an existing officer within the meaning of this section.

(10) Every existing officer or existing servant not entitled to compensation under this section, who becomes incapable of discharging the duties of his office with efficiency, by reason of permanent infirmity of mind or body, or who has attained the age of sixty years, or who, having been in the service of a metropolitan water company for a period of not less than five years, is dismissed by the Water Board on any ground other than misconduct, shall, upon his resigning or otherwise ceasing to hold office, be entitled to a superannuation allowance upon the terms and conditions and according to the scale specified in the Superannuation (Metropolis) Act, 1866, as applied by this Act.

Sect. 120 of the Local Government Act, 1888 (51 & 52 Vict. c. 41), provides as follows:

> "(1) Every existing officer declared by this Act to be entitled to compensation, and every other existing officer, whether before mentioned in this Act or not, who by virtue of this Act, or anything done in pursuance of or in consequence of this Act, suffers any direct pecuniary loss by abolition of office or by diminution or loss of fees or salary, shall be entitled to have compensation paid to him for such pecuniary loss by the county council, to whom the powers of the authority, whose officer he was, are transferred under this Act, regard being had to the conditions on which his appointment was made, to the nature of his office or employment, to the duration of his service, to any additional emoluments which he acquires by virtue of this Act or of anything done in pursuance of or in consequence of this Act, and to the emoluments which he might have acquired if he had not refused to accept any office offered by any council or other body acting under this Act, and to all the other circumstances of the case, and the compensation shall not exceed the amount which, under the Acts and rules relating to her Majesty's Civil Service, is paid to a person on abolition of office.
>
> "(2) Every person who is entitled to compensation, as above mentioned, shall deliver to the county council a claim under his hand setting forth the whole amount received and expended by him or his predecessors in office, in every year during the period of five years next before the passing of this Act, on account of the emoluments for which he claims compensation, distinguishing the offices in respect of which the same have been received, and accompanied by a statutory declaration under the Statutory Declaration Act, 1835, that the same is a true statement according to the best of his knowledge, information, and belief.
>
> "(3) Such statement shall be submitted to the county council, who shall forthwith take the same into consideration, and assess the just amount of compensation (if any), and shall forthwith inform the claimant of their decision.
>
> "(4) If a claimant is aggrieved by the refusal of the county council to grant any compensation, or by the amount of compensation assessed, or if not less than one-third of the members of such council subscribe a protest against the amount of the compensation as being excessive, the claimant or any subscriber to such protest (as the case

may be) may, within three months after the decision of the council, appeal to the Treasury, who shall consider the case and determine whether any compensation, and if so, what amount ought to be granted to the claimant, and such determination shall be final.

"(5) Any claimant under this section, if so required by any member of the county council, shall attend at a meeting of the council and answer upon oath, which any justice present may administer, all questions asked by any member of the council touching the matters set forth in his claim, and shall further produce all books, papers, and documents in his possession or under his control relating to such claim.

"(6) The sum payable as compensation to any person in pursuance of this section shall commence to be payable at the date fixed by the council on granting the compensation, or, in case of appeal, by the Treasury, and shall be a specialty debt due to him from the county council, and may be enforced accordingly in like manner as if the council had entered into a bond to pay the same.

"(7) If a person receiving compensation in pursuance of this section is appointed to any office under the same or any other county council, or by virtue of this Act, or anything done in pursuance of or in consequence of this Act, receives any increase of emoluments of the office held by him, he shall not, while receiving the emoluments of that office, receive any greater amount of his compensation, if any, than, with the emoluments of the said office, is equal to the emoluments for which compensation was granted to him, and if the emoluments of the office he holds are equal to or greater than the emoluments for which compensation was granted, his compensation shall be suspended while he holds such office.

"(8) All expenses incurred by a county council in pursuance of this section shall be paid out of the county fund, as a payment for general county purposes."

The Acts relating to civil servants are the Superannuation Acts, 1859 and 1884. The former, after providing by s. 2 for a superannuation allowance of one-sixtieth of the annual salary and emoluments for every year of service (in no case exceeding two-thirds of the annual salary and emoluments), enables the Treasury to grant "an annual allowance by way of compensation" if an office is abolished (s. 7). There appears to be, in fact, no power to make "Rules," but it is the "practice" of the Treasury in cases of abolition of office to grant as compensation the above-mentioned allowance of one-sixtieth for every year of service, *plus* the following additional allowance:

For 20 years of service and upwards - - -	$\frac{10}{60}$ths	additional.
,, 15 ,, but under 20 - - -	$\frac{7}{60}$ths	,,
,, 10 ,, ,, 15 - - -	$\frac{5}{60}$ths	,,
,, 5 ,, ,, 10 - - -	$\frac{3}{60}$ths	,,
Under 5 years - - - - - -	$\frac{1}{60}$th	,,

It is also the "practice" to make a deduction of one-fourth of the amount of the compensation when an officer has not been required to devote his whole time to the duties of his office.

By s. 3 of the Act of 1884, a special additional allowance may be made in respect of an office requiring a professional or other peculiar qualification.

As to the Superannuation (Metropolis) Act, 1866, see the note under s. 24, *ante*, p. 620.

Compensation to directors.

48.—(1) The Water Board shall pay to each of the metropolitan water companies, by way of compensation for the loss of office sustained by such of the directors of the company as were in office both at the date of the publication of the notice for the Bill for this Act and on the appointed day, such sum as may be agreed upon between the Water Board and the company, or, in default of agreement, as may be determined by an arbitrator appointed by the Local Government Board.

(2) The sum paid to any company under this section shall be distributed amongst the directors entitled to compensation in such proportions as those directors, or a majority of them, determine.

Compensation to auditor of companies' accounts.

49. The Water Board shall pay to the auditor of the accounts of the metropolitan water companies such annual or other sum by way of compensation for loss of office as the Local Government Board may think just.

Transitory provisions as to supply in bulk.

50. Until the quantity of water to be supplied to the council of a borough or urban district which under this Act ceases to be within the limits of supply has been determined in accordance with the provisions of this Act, the Water Board shall supply to each council such quantity as the council may require, not exceeding three hundred and fifty gallons per diem for each supply within the borough or urban district, as ascertained from the register of supplies in existence at the appointed day, and the price to be paid for the water so supplied shall be a matter to be determined in accordance with the provisions of this Act relating to the price to be paid for water supplied in bulk to the council of a borough or district.

Power of Local Government Board to remove difficulties.

51.—(1) If any difficulty arises with respect to the establishment of the Water Board or to the appointment of the first members thereof or to the first meeting thereof, the Local Government Board may by order make any appointment or do anything which appears to them to be necessary or expedient for the proper establishment of the Water Board, and the proper holding of the first election and first meeting.

(2) Any such order may modify the provisions of this Act, so far as may appear to the Local Government Board necessary or expedient for carrying the order into effect.

Provisions as to stamp duty on transfer.

52. Where the amount of the consideration for an undertaking transferred to the Water Board under this Act is not ascertained before the appointed day, the date of the final ascertainment of that amount shall, for the purposes of section twelve of the Finance Act, 1895 (which relates to stamp duty on property vested by Act of Parliament), be treated as the date of vesting.

Cost of Act.

53. All costs, charges, and expenses preliminary to and of and incidental to the preparing, applying for, obtaining, and passing of this Act incurred by the Local Government Board shall be repaid to that Board by the Water Board when established under this Act.

SCHEDULES.

FIRST SCHEDULE.

METROPOLITAN WATER COMPANIES.

The Governor and Company of the New River brought from Chadwell and Amwell to London, commonly called the New River Company.

The East London Waterworks Company.

The Southwark and Vauxhall Company.

The Company of Proprietors of the West Middlesex Waterworks.

The Company of Proprietors of Lambeth Waterworks.

The Governor and Company of Chelsea Waterworks.

The Grand Junction Waterworks Company.

The Company of Proprietors of the Kent Waterworks.

The Staines Reservoirs Joint Committee.

SECOND SCHEDULE.

DESCRIPTION OF THE LIMITS OF SUPPLY.

The parishes and places in which at the appointed day any of the metropolitan water companies are authorised to supply water, and the parishes of Sunbury and Chessington.

See, as to the area of the Metropolitan Water Board, the Table at p. 640, *post.*

THIRD SCHEDULE.

CONSTITUTION AND PROCEEDINGS OF WATER BOARD.

Chairman.

1. The chairman or vice-chairman need not be appointed from amongst the members of the Water Board, but if a member of the Board is appointed chairman or vice-chairman the appointment shall not create a casual vacancy.

Disqualifications for membership.

2. A person shall be disqualified for being appointed or being a member of the Water Board if he—

(*a*) holds any paid office under the Water Board save as permitted by this Act; or

(*b*) is concerned in any bargain or contract entered into with the Water Board or participates in the profit of any such bargain or contract or of any work done under the authority of the Board:

Provided that a person shall not be disqualified for being appointed or being a member of the Board by reason of being interested—

(*a*) in the sale or lease of any lands or in any loan of money to the Board, or in any contract with the Board for the supply from land, of which he is owner or occupier, of water, or materials for work done by or under the authority of the Board; or

(*b*) in any newspaper in which any advertisement relating to the affairs of the Board is inserted; or

(*c*) in any bargain or contract with the Board as a shareholder in any company; but he shall not vote at any meeting of the Board on any question in which such company are interested.

3. A director of a metropolitan water company shall, until the compensation payable to the company is determined, be disqualified from being appointed or being a member of the Water Board.

4. If a person appointed to be a member of the Water Board is a member of the Council or one of the Councils by whom he is appointed, he shall, if he ceases for two months to be a member of that Council, at the end of that period vacate his office as member of the Water Board.

5. The member appointed by the Conservators of the River Thames, shall be a Conservator appointed by the county councils of Gloucestershire and Wiltshire, or by the county councils of Oxfordshire, Berkshire, or Buckinghamshire, or by the council of the county borough of Oxford or Reading.

6. The members of the Water Board appointed by the Conservators of the River Thames and the Lee Conservancy Board shall not vote or act in respect of any question arising before the Water Board as regards the transfer of any undertaking to the Water Board under this Act.

7. A person shall be disqualified for being a member of the Board if he is convicted either on indictment or summarily of any crime, and sentenced to imprisonment with hard labour without the option of a fine, or to any greater punishment, or is adjudged bankrupt, or makes a composition or arrangment with his creditors.

Joint committee.

8. A member appointed by a constituent authority consisting of a group of councils shall be appointed by those councils acting through a joint committee.

9. Subject to any variation of representation according to the provisions of this Act the joint committees for appointing members of the Water Board shall be constituted as follows:—

(i.) The joint committee of the councils of the urban districts of Buckhurst Hill, Chingford, Loughton, Waltham Holy Cross, Wanstead, and Woodford shall consist of twelve members, of whom one shall be appointed by each of the councils of the urban districts of Buckhurst Hill, Chingford, and Loughton, two by the council of the urban district of Waltham Holy Cross, three by the council of the urban district of Wanstead, and four by the council of the urban district of Woodford.

(ii.) The joint committee of the councils of the urban districts of Beckenham, Bromley, Chislehurst, Penge, Bexley, Dartford, Erith, and Footscray shall consist of twenty members, of whom four shall be appointed by each of the councils of the urban districts of Beckenham and Bromley, three by each of the councils of the urban districts of Erith and Penge, two by each of the councils of the urban districts of Bexley and Dartford, and one by each of the councils of the urban districts of Chislehurst and Footscray.

(iii.) The joint committee of the councils of the borough of Ealing and of the urban districts of Acton and Chiswick shall consist of eight members, of whom three shall be appointed by the council of the borough of Ealing, three by the council of the urban district of Acton, and two by the council of the urban district of Chiswick.

(iv.) The joint committee of the councils of the urban districts of Brentford, Hampton, Hampton Wick, Hanwell, Heston and Isleworth, Sunbury, Teddington, and Twickenham shall consist of twenty-one members, of whom one shall be appointed by each of the councils of the urban districts of Hampton Wick and Sunbury, two by each of the councils of the urban districts of Hampton and Hanwell, three by each of the councils of the urban districts of Brentford and Teddington, four by the council of the urban district of Twickenham, and five by the council of the urban district of Heston and Isleworth.

(v.) The joint committee of the councils of the urban districts of Edmonton, Enfield, and Southgate shall consist of five members, of whom two shall be appointed by each of the councils of the urban districts of Edmonton and Enfield and one by the council of the urban district of Southgate.

(vi.) The joint committee of the councils of the urban districts of Hornsey and Wood Green shall consist of seven members, of whom five shall be appointed by the council of the urban district of Hornsey, and two by the council of the urban district of Wood Green.

(vii.) The joint committee of the councils of the borough of Kingston, and the urban districts of East and West Molesey, Esher and the Dittons, Ham, Surbiton, Barnes, the Maldens and Coombe, and Wimbledon shall consist of thirty-three members, of whom seven shall be appointed by the council of the borough of Kingston, ten by the council of the urban district of Wimbledon, four by each of the councils of the urban districts of Barnes and Surbiton, three by the council of the urban district of Esher and the Dittons, two by each of the councils of the urban districts of East and West Molesey and the Maldens and Coombe, and one by the council of the urban district of Ham.

10. A joint committee may act notwithstanding any vacancy in the committee, and notwithstanding that a council is wholly unrepresented thereon.

11. The Local Government Board may make regulations as to the constitution, term of office, quorum, proceedings, officers, and place of meeting of a joint committee.

The Regulations made hereunder are set out at p. 678, *post.*

Term of office.

12. Subject to the provisions of this schedule the term of office of chairman and of vice-chairman shall be three years, and the term of office of a member of the Board shall be three years.

13. On the first day of June one thousand nine hundred and seven and on the first day of June in every third year thereafter, all the members of the Board shall go out of office, and their places shall be filled by new appointments, to be made at such time as may be prescribed by regulations made by the Local Government Board, but a person going out of office may, if otherwise qualified, be reappointed.

14. The first business at the first meeting of the Water Board after the first day of June one thousand nine hundred and seven, and at the first meeting after the first day of June in every third year thereafter shall be the new appointment of a chairman and vice-chairman, but a person going out of office may, if otherwise qualified, be reappointed, and a chairman or vice-chairman shall continue in office until his successor is appointed.

Vacation of office by absence.

15. If a member of the Water Board is absent from meetings of the Board for more than six months consecutively, except for some reason approved by the Water Board, he shall on the expiration of those months vacate his office, and shall also, if he is the chairman or vice-chairman, vacate his office as chairman or vice-chairman.

16. Where the chairman or vice-chairman or a member of the Water Board becomes disqualified for holding office or vacates his office from absence, or otherwise, the Board shall forthwith declare the office to be vacant, and shall notify the fact in such manner as they think fit, and thereupon the office shall become vacant.

Casual vacancies.

17. On a casual vacancy occurring in the Water Board by reason of the death, resignation, disqualification, or absence of a member, or otherwise, the

constituent authority by whom that member was appointed shall appoint another person in his place, and the person so appointed shall hold office until the time when the person in whose place he is appointed would have regularly gone out of office, and shall then go out of office.

Sched. 3.

Notice of vacancies.

18. On a vacancy occurring or being about to occur in the Water Board the clerk of the Water Board shall immediately give notice of the vacancy to the constituent authority by which the vacancy is to be filled, and on a person being appointed a member of the Water Board the appointing authority shall forthwith give notice of the appointment to the Water Board, or in the case of a first appointment to the Local Government Board.

19. On a casual vacancy occurring in the office of chairman or vice-chairman of the Water Board by reason of the death, resignation, disqualification, or absence of the chairman or vice-chairman, or otherwise, the person appointed in his place shall hold office until the time when the person in whose place he is appointed would regularly have gone out of office and shall then go out of office.

20. At every meeting of the Water Board, the chairman, if present, shall preside. If the chairman is absent, the vice-chairman, if present, shall preside. If both the chairman and vice-chairman are absent, such member of the Board as the members then present choose shall preside.

Decisions.

21. Subject to the provisions of this Act, every question at a meeting of the Water Board shall be decided by a majority of votes of the members present and voting on that question, and in the case of equality of votes, the person presiding at the meeting shall have a second or casting vote.

Quorum.

22. The quorum of the Water Board shall be one-third of the whole number of the Board.

Committees.

23. The Water Board may appoint, out of their own body, such and so many committees, either of a general or special nature, and consisting of such number of persons as they think fit for any purposes which, in the opinion of the Board, would be better regulated and managed by means of committees, and may delegate, with or without any restrictions or conditions, as they may think fit, any of their powers or duties, except any power of raising money, to any committee of the Board so appointed, and the provisions of section eighty-two of the Local Government Act, 1888, with respect to proceedings of committees of county councils, shall apply to committees of the Water Board, as if they were committees of a county council.

By s. 82 of the Local Government Act, 1888, it is provided as follows :—

> 82.—(1) A county council appointing under this Act any committee may from time to time make, vary, and revoke regulations respecting the quorum and proceedings of such committee, and as to the area (if any) within which it is to exercise its authority ; and subject to such regulations the proceedings and quorum and the place of meeting, whether within or without the county, shall be such as the committee may from time to time direct, and the chairman at any meeting of the committee shall have a second or casting vote.
>
> (2) Every committee shall report its proceedings to the council by whom it was appointed, but to the extent to which the council so direct, the acts and proceedings of the committee shall not be required by the provisions of the Municipal Corporations Act, 1882, to be submitted to the council for their approval.

Minutes.

24. A minute of the proceedings of the Water Board, or of a committee thereof, signed at the same or the next ensuing meeting by a member of the Board describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.

25. Until the contrary is proved, every meeting in respect of the proceedings whereof a minute has been so made shall be deemed to have been duly convened and held, and all the members of the meeting shall be deemed to have been duly qualified; and where the proceedings are proceedings of a committee, the committee shall be deemed to have been duly constituted and to have had power to deal with the matter referred to in the minutes.

26. Subject to the provisions of this Act, the Water Board may regulate their own procedure.

27. No act or proceeding of the Water Board shall be questioned on account of any vacancy in their body, or on account of the appointment of any member having been defective.

Local Government Board to take steps.

28. The Local Government Board shall take such steps as may be necessary for constituting the Water Board as soon as may be after the passing of this Act, and for summoning the first meeting of the Water Board and regulating the proceedings thereat, and all authorities and persons shall comply with any instructions issued by the Local Government Board for that purpose, and any expenses incurred by the Local Government Board for the purpose aforesaid shall be repaid to that Board by the Water Board when established.

FOURTH SCHEDULE.

1. Within three months after the ascertainment of any compensation to which a metropolitan water company become entitled under this Act, in consideration for the transfer of their undertaking, the directors of the company shall prepare a scheme for the application and distribution thereof. Any such scheme shall provide for the payment and discharge of any liability which, under this Act, is to continue as a liability of the company, or is not otherwise provided for, and may provide for payment of any sum in consideration of loss of office, or in recognition of any special services rendered to the company. The directors shall send by post a copy of the scheme to each shareholder (which term also includes a stockholder or proprietor) of the company, and for the purposes of this section the persons appearing as shareholders in the books of the company shall be deemed to be shareholders and of the class there appearing, and any document shall be sufficiently sent to any shareholder by being posted to him at his address as appearing in the books of the company.

If within one month after the sending of the copies aforesaid any shareholder or shareholders the aggregate nominal value of whose shares (which term also includes stock) is not less than twenty thousand pounds, shall, by writing addressed to the secretary of the company, require that the scheme be submitted to a meeting of the shareholders, or (if there are more than one class of shareholders of the company) of the class to which such shareholder or shareholders belong, the directors shall forthwith summon such meeting, accordingly, by giving not less than fourteen days' notice thereof by post to each shareholder of the company, or to each shareholder of the class concerned, as the case may be. If a majority in value of the shareholders, or of the shareholders of a particular class, as the case may be, by resolution passed at such meeting, dissent from such scheme, the directors shall forthwith submit the matter by petition to the Chancery Division of the High Court, and the court shall, after hearing all proper parties, make such order as to the application and distribution of the compensation to which the company are entitled under this Act, as, under all the circumstances of the case, and having regard to the various interests of the parties and the nature of such interest, may be considered just and equitable. Any scheme not required to be submitted to a meeting of shareholders, or as to which no such resolution of dissent as aforesaid shall have been passed, and any order of court made hereunder, shall have effect as if the same were enacted by this Act, and shall be binding upon all persons affected thereby.

It was held that the "majority in value of the shareholders or of the shareholders of a particular class," which is required by the above paragraph to enable a scheme of the directors for the distribution of the compensation payable for the purchase of a water undertaking to be submitted to the Chancery Division, meant a majority in value of all the shareholders of the company or of the particular class, and not merely a majority in value of the shareholders present at the meeting (*Clay* v. *Grand Junction Waterworks Co.* (1904), 21 T. L. R. 31).

2. If any part of the compensation is to be discharged to a company in water stock the Water Board shall, if so required by the company, before the stock is issued to the company, instead of issuing to the company the whole of the water stock to be so issued to them issue the water stock to such amounts and to such persons as the company may require, and the issue of water stock in accordance with such requirements shall, to that extent discharge the Water Board of their liability to issue water stock to the company.

If any part of such compensation is to be discharged in cash, the receipt in writing of three directors of the company for any sum in gross to be paid by the Water Board to the company shall effectually discharge the Water Board from the sum expressed in such receipt to have been received and from being concerned to see to the application thereof, and from being answerable or accountable for the loss, misapplication, or non-application thereof.

3. Where any company are unable, after diligent inquiry, to find the person to whom any money is payable or water stock is issuable, or where any money or stock is payable or issuable to a person who or whose committee cannot give an effectual receipt for the same, such company may pay or transfer the same as nearly as may be in manner provided for payment of money into court by any Act for the time being in force for the relief of trustees, and such Act shall apply, with all necessary modifications, to such money or stock.

4. When such scheme has been completely carried out, and all such moneys or stock, if any, as in clause 3 of this schedule referred to, have been paid or transferred into court, the company may apply to the Board of Trade, which, if satisfied that the said time has arrived, shall give a certificate to that effect, and upon publication of such certificate in the London Gazette the company shall be dissolved.

FIFTH SCHEDULE.

Enactments Repealed.

Session and Chapter.	Short Title.	Extent of Repeal.
15 & 16 Vict. c. 84.	The Metropolis Water Act, 1852.	Sections fifteen, nineteen, twenty, twenty-one, twenty-two, and twenty-seven, so far as unrepealed.
34 & 35 Vict. c. 113.	The Metropolis Water Act, 1871.	Sections thirty-seven to forty-two and section forty-seven from "or to authorise" to the end of the section.
47 & 48 Vict. c. cxli.	Croydon Corporation Act, 1884.	Sections eleven and twelve.

METROPOLITAN WATER BOARD'S AREA.—Statement showing the Local Government (Public Health) areas and Union, Parliamentary Division or Parliamentary Borough, Hundred, Petty Sessional Division, County together with the Acts of authorisation of supply, the area in acres, the number of inhabited houses, and the Local Government districts which are not directly represented on the Water Board.

Local Government (Public Health) Area. (1)	Constituent parish or parishes. (2)	Act of Authorisation (or Confirmation) of supply to parish. (3)	Acreage of parish (Census, 1901). (4)	Inhabited houses in parish (Census, 1901). (5)	Population in parish (Census, 1901). (6)	Rateable value of whole parish, 1907. (7)	Poor Law Union. (8)	Parliamentary Division or Parliamentary Borough. (9)
ESSEX.						£		
Barking Town Urban District (*a*) † §	Barking Town	E. L., 1853	[3,803]	[3,843]	[21,547]	[157,512]	Romford...	Southern (Romford) Division
Buckhurst Hill Urban District	Buckhurst Hill	E. L., 1853	873	920	4,786	29,195	Epping ...	Western (Epping) Division
Chingford Urban District	Chingford ...	E. L., 1853	2,808	830	4,373	43,039	Epping ...	Western (Epping) Division
East Ham Borough	East Ham Little Ilford }	E. L., 1853	3,326	16,713	96,018	480,000	West Ham	Southern (Romford) Division
Epping Rural District †	Chigwell ... (14 other parishes not in Board's area)	E. L., 1853	4,136	463	2,508	17,007	Epping ...	Western (Epping) Division
Ilford Urban District (*a*) † §	Ilford	E. L., 1853	3,040 [*ex* 8,496]	1,554 [*ex* 7,649]	10,675 [*ex* 41,234]	50,000 est. [*ex* 376,000]	Romford...	Southern (Romford) Division
Leyton Urban District	Low Leyton ...	E. L., 1853	2,371	13,112	76,680	424,203	West Ham	South Western (Walthamstow) Division
	Cann Hall ...	E. L., 1853	223	3,979	22,232	67,627	West Ham	Southern or (Romford) Division
Loughton Urban District	Loughton ...	E. L., 1853	3,961	943	4,730	30,520	Epping ...	Western (Epping) Division
Ongar Rural District †	Lambourne ... (25 other parishes not in Board's area)	Met. Water, 1902, sec. 3	2,470	183	938	4,644	Ongar ...	Western (Epping) Division
Romford Rural District (*a*) †	Dagenham (*a*) ‖ (8 other parishes not in Board's area)	E. L., 1853	246 (*ex 6,556*)	11 (*ex 1,222*)	66 (*ex 6,091*)	41,673	Romford...	Southern (Romford) Division
Romford Urban District (*a*) † §	Romford ...	E. L., 1853	[5,630]	[2,805]	[13,656]	[85,925]	Romford...	Southern (Romford) Division
Waltham Holy Cross Urban District	Waltham Abbey	E. L., 1853	11,017	1,311	6,549	51,186	Edmonton	Western (Epping) Division
Walthamstow Urban District	Walthamstow	E. L., 1853	4,343	16,083	95,131	431,973	West Ham	South Western (Walthamstow) Division
Wanstead Urban District	Wanstead ...	E. L., 1853	1,679	1,666	9,179	86,370	West Ham	Southern (Romford) Division
West Ham County Borough	West Ham ...	E. L., 1748, 1807	4,683	41,368	267,358	1,307,680	West Ham	West Ham Borough (2 members)
Woodford Urban District	Woodford St. Mary	E. L., 1853	2,161	2,614	13,798	107,315	West Ham	South Western (Walthamstow) Division
2 Boroughs 11 Urban Districts 3 Rural Districts	} 18	Total statutory area of supply in Essex.	62,226	114,493	680,783	3,741,869	5	5
		Total less Barking Town, Romford, and part Ilford, see note (*a*)	47,337	101,750	615,021	3,172,432		

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* Greater London, so named by the Registrar General, is conterminous with the Metropolitan and City Police

§ The Urban Districts and parishes of Barking Town, Romford, and Ilford are wholly within the Board's Company, and Ilford is partly supplied by the Board as shown, the remainder being supplied by the South Essex

‖ The figures in ordinary type refer to the part of the parish in the Board's area of supply, and the figures in constituent parishes wholly or partly within the area of the Metropolitan Water Board, and the Poor Law Court District, and Police Jurisdiction within which each such Local Government area and parish is situated; the population of each parish or part (Census 1901); Rateable value of whole parish, June, 1907; and indicating (†)

Hundred. (10)	Petty Sessional Division. (11)	County Court District. (12)	Police.* (13)	Remarks. (14)
Beacontree...	Beacontree...	Romford and Ilford	Metropolitan K Div. (Bow)	Separated from Ilford 29th September, 1888, by Barking Act, 1888, creating it a distinct civil parish. Town formerly under Local Board established by Local Government Board Order, October 14th, 1882. District extended to embrace whole parish in 1885. By Local Government Board Order, 1893, part of Barking Town Urban District was transferred to East Ham Urban District, and part of East Ham Urban District was transferred to Barking Town Urban District. Barking includes Rippleside.
Ongar	Epping ...	Romford and Ilford	Metropolitan J Div. (Hackney)	Constituted a civil parish and Urban District out of Chigwell parish by Local Government Board Order, 1894.
Waltham ...	Epping ...	Waltham Abbey	Metropolitan N Div. (Islington)	Constituted an Urban District by Local Government Board Order, 1894.
Beacontree...	East Ham ...	Bow	Metropolitan K Div. (Bow)	Formerly under Local Board constituted in 1878. Little Ilford added October, 1886. Became a Borough in November, 1904. Includes Becton, North End, and Wallend.
Ongar	Epping ...	Romford and Ilford	Metropolitan J Div. (Hackney)	Chigwell includes Chigwell Row.
Beacontree...	Beacontree...	Romford and Ilford	Metropolitan K (Bow) and J (Hackney) Div.	Constituted 29th September, 1888, a separate civil parish out of Barking, by Barking Act, 1888. Local Board formed in October, 1890.
Beacontree...	Beacontree...	Bow	Metropolitan N J and K Div.	Part of Wanstead transferred to Leyton Urban District by Local Government Board Order, 1900. Includes Leytonstone.
Beacontree...	Beacontree...	Bow	Metropolitan N J and K Div.	
Ongar	Epping ...	Waltham Abbey	Metropolitan J Div. (Hackney)	Urban District formed by Local Government Board Order in April, 1900. Includes Debden Green.
Ongar	Epping ...	Romford and Ilford	County, Epping Div. (Sergeant's Station)	Lambourne includes Abridge.
Beacontree...	Beacontree...	Romford and Ilford	Metropolitan K Div. (Bow)	Dagenham includes Beacontree Heath, Chadwell Heath, Hainault, and Mark Gate
Beacontree (see note 2 in col. 14)	Romford ...	Romford and Ilford	County, Romford Div. (Superintendent's Station)	(1) Local Board formed in 1851. Ancient parish of Romford divided in 1895 into three civil parishes of Romford Urban, Romford Rural, and Noak Hill. Romford Urban and Romford Rural amalgamated on 24th April, 1900. (2) Formerly capital of the Liberty of Havering-atte-Bower (comprising parishes of Horn-church, Romford, and Havering), until abolition of liberty, 9th May, 1892.
Waltham ...	Epping ...	Waltham Abbey	Metropolitan N Div. (Islington)	Local Board formed in 1845. Includes Crooked Mile and High Beech.
Beacontree...	Beacontree...	Bow	Metropolitan N and J Div.	Part of Walthamstow transferred to Woodford in 1901.
Beacontree...	Beacontree...	Bow	Metropolitan J and K Div.	Local Board formed in 1854. Includes Hamlet of Snaresbrook. In 1900 part of Wanstead Urban District transferred to Leyton Urban District; and in 1901 part of East Ham Urban District transferred to Wanstead Urban District, and *vice versa*.
Beacontree...	West Ham ...	Bow	Metropolitan K Div.	Governed by a Local Board from 1856, Incorporated in 1886, made a Quarter Sessions Borough in 1894. Comprises Silvertown, Upton, Stratford, Forest Gate, Plaistow, and Canning Town.
Beacontree...	Beacontree...	Bow	Metropolitan J Div. (Hackney)	Local Board formed in 1873. Part of Walthamstow Urban District transferred in 1901 to Woodford Urban District.
3	5	3		*Essex County.*—Total acreage, 974,849; population (1901), 816,640; rateable value, June 1907, £4,836,320.

Districts. † Not directly represented on the Water Board.
statutory area of supply, but Barking Town and Romford are wholly supplied by the South Essex Waterworks Company. The figures in square brackets refer to the whole parish and district. See note (*a*) at p. 660.
italics to the whole parish. See note (*a*) at p. 660.

Local Government (Public Health) Area. (1)	Constituent parish or parishes. (2)	Act of Authorisation (or Confirmation) of supply to parish. (3)	Acreage of parish (Census, 1901). (4)	Inhabited houses in parish (Census, 1901). (5)	Population in parish (Census 1901). (6)	Rateable value of whole parish, 1907. (7)	Poor Law Union. (8)	Parliamentary Division or Parliamentary Borough. (9)
HERTS.						£		
East Barnet Valley Urban District (*c*) †	East Barnet ‖ (2 other parishes not in Board's area)	Met. Water, 1902, secs. 3 & 35 (2)	6 (*ex 1,697*)	5 (*ex 1,289*	28 (*ex 6,839*)	61,395	Barnet ...	Mid. Division ...
Hertford Borough †	Part of Hertford Borough formerly part of Little Amwell ‖	N. R., 1852 1854	30 (*ex 1,134*)	7 (*ex 1,970*)	35 (*ex 9,322*)	53,091	Hertford...	Eastern Division
Hertford Rural District †	Little Amwell	N. R., 1852, 1854	494	179	825	2,687	Hertford...	Eastern Division
	St. John (without Hertford) Rural (15 other parishes not in Board's area)	N. R., 1852, 1854	1,662	19	252	2,041	Hertford...	Eastern Division
Hoddesdon Urban District (*b*) †	Hoddesdon-Urban	N. R., 1852, 1854	1,576	1,029	4,711	29,558	Ware ...	Eastern Division
Ware Rural District †	Great Amwell	N. R., 1852, 1854	2,264	298	1,894	14,714	Ware ...	Eastern Division
	Broxbourne ...	N. R., 1852, 1854	1,932	163	748	12,678	Ware ...	Eastern Division
	Stanstead St. Margaret	N. R., 1852, 1854	408	45	192	2,546	Ware ...	Eastern Division
	Wormley ...	N. R., 1852, 1854	946	206	1,018	6,211	Ware ...	Eastern Division
	Ware Rural ...	N. R., 1854	4,208	191	883	6,420	Ware ...	Eastern Division
	Hoddesdon Rural (9 other parishes not in Board's area)	N. R., 1854	1,110	16	70	802	Ware ...	Eastern Division
1 Borough 2 Urban Districts 2 Rural Districts	11	Total statutory area of supply in Herts.	14,636	2,158	10,656	192,143	3	2
KENT.								
Beckenham Urban District	Beckenham ...	K., 1877 ; L., 1848	3,883	4,701	26,331	266,993	Bromley...	Western or Sevenoaks Division
Bexley Urban District	Bexley ...	K., 1860, 1864	5,329	2,591	12,918	93,572	Dartford...	North Western or Dartford Division
	East Wickham	K., 1860, 1877	894	328	1,661	11,994	Dartford...	
Bromley Borough...	Bromley ...	K., 1860, 1864	4,703	5,127	27,354	260,307	Bromley...	Western or Sevenoaks Division
Bromley Rural District †	Chelsfield ...	K., 1877 ...	3,378	330	1,522	15,935	Bromley...	Western or Sevenoaks Division
	Cudham ...	K., 1888 ...	5,925	230	1,111	7,490	Bromley...	Western or Sevenoaks Division
	Downe ...	K., 1888 ...	1,652	139	610	4,834	Bromley...	Western or Sevenoaks Division
	Farnborough	K., 1877 ...	1,429	285	2,262	17,204	Bromley...	Western or Sevenoaks Division
	Hayes ...	K., 1877 ...	1,282	188	838	9,519	Bromley...	Western or Sevenoaks Division
	Keston ...	K., 1877 ...	1,487	171	832	7,114	Bromley...	Western or Sevenoaks Division

† Not directly represented

‖ The figures in ordinary type refer to the part of the parish in the Board's area of

Hundred. (10)	Petty Sessional Division. (11)	County Court District. (12)	Police. (13)	Remarks. (14)
Cashio ...	Barnet ...	Barnet ...	Metropolitan S and Y Div.	Formerly governed by a Local Board formed September, 1863. The Urban District also comprises the parishes of Barnet Vale and Monken Hadley. Total acreage of Urban District, 2,644; pop. (1901) 10,094; rateable value, 1907, £93,113.
Hertford ...	Hertford Borough	Hertford ...	County F or Hertford Div.	Incorporated 1554 by Queen Mary. New Charter granted in 31 Elizabeth, confirmed by James I. in 1608, and Charles II. in 1680. The parishes in the borough consolidated into one civil parish, 30th September, 1900.
Hertford ...	Hertford ...	Hertford ...	County F or Hertford Div.	Formerly a liberty in All Saints, Hertford, constituted a civil parish in August, 1864. The New River commences at Chadwell Spring in this parish. By Local Government Board Order dated 22nd March, 1888, part of Amwell End was transferred to Ware.
Hertford ...	Hertford ...	Hertford ...	County F or Hertford Div.	Includes Dalmond.
Hertford ..	Cheshunt ...	Hertford ...	County A or Ware Div.	By Local Government Board Order, 1894, parts of Hoddesdon and Great Amwell civil parishes were constituted Hoddesdon civil parish and district.
Hertford ...	Ware (part of Hertford Heath)	Hertford ...	County A or Ware Div.	Under the provisions of the Divided Parishes Act, a detached part of this parish has been added to Hoddesdon. Woolen's Brook in this parish. Hertford Heath partly in this parish and partly in Little Amwell.
Hertford ...	Cheshunt ...	Hertford ...	County A or Ware Div.	The Ware Rural District Council also supply in Broxbourne and Wormley, and parts of Great Amwell.
Hertford ...	Ware ...	Hertford ...	County A or Ware Div.	
Hertford ...	Cheshunt ..	Hertford ...	County A or Ware Div.	Includes West End and Wormleybury.
Braughing ...	Ware ...	Hertford ...	County A or Ware Div.	Includes Babo's Green, Wareside and Watersplace.
Hertford ...	Cheshunt ...	Hertford ...	County A or Ware Div.	Hoddesdon was divided into two parishes. "Urban" and "Rural," in 1895.
3	5	2		*Herts County.*—Total Acreage, 404,518; population (1901), 258,423; rateable value, 1906, £1,712,261.
Bromley and Beckenham	Bromley, Penge	Bromley ...	Metropolitan P Div. (Camberwell)	Local Board formed in 1878. Contains Elmer's End, Shortlands, and part of Lower Sydenham.
Ruxley ...	Dartford ...	Dartford ...	Metropolitan R Div. (Greenwich)	Local Board formed in 1880. East Wickham added in 1902. Includes Bell Grove, Bickley, Plaistow, Welling and Widmore.
Little and Lessness Bromley and Beckenham	Bromley ...	Bromley ...	Metropolitan P. Div. (Camberwell)	Local Board formed in 1867. Incorporated August, 1903.
Ruxley ...	Bromley ...	Bromley ...	County	Green Street Green Hamlet partly in Chelsfield, partly in Farnborough.
Ruxley ...	Bromley ...	Bromley ...	County	
Ruxley ...	Bromley ...	Bromley ...	Metropolitan P Div. (Camberwell) and R Div. (Greenwich)	
Ruxley ...	Bromley ...	Bromley ...	Metropolitan P Div. (Camberwell) and R Div. (Greenwich)	Includes Lock's Bottom.
Ruxley ...	Bromley ...	Bromley ...	Metropolitan P Div. (Camberwell) and R Div. (Greenwich)	
Ruxley ...	Bromley ...	Bromley ...	Metropolitan P Div. (Camberwell and R. Div. (Greenwich)	

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on the Water Board.
supply, and the figures in italics to the whole parish. See notes at p. 660.

Local Government (Public Health) Area. (1)	Constituent parish or parishes. (2)	Act of Authorisation (or Confirmation) of supply to parish. (3)	Acreage of parish (Census, 1901). (4)	Inhabited houses in parish (Census, 1901). (5)	Population in parish (Census, 1901). (6)	Rateable value of whole parish, 1907. (7)	Poor Law Union. (8)	Parliamentary Division or Parliamentary Borough. (9)
KENT—contd.						£		
Bromley Rural District † (*continued*)	Knockholt ...	K., 1888 ...	1,701	217	952	5,225	Bromley...	Western or Sevenoaks Division
	Mottingham ...	K.,1860,1864 Met. Water 1902, sec. 3	642	219	1,332	12,917	Bromley...	Western or Sevenoaks Division
	North Cray ...	K., 1877 ...	1,484	143	661	5,387	Bromley...	North Western or Dartford Division
	Orpington ...	K., 1877 ...	3,517	830	4,259	29,707	Bromley...	North Western or Dartford Division
	St. Mary Cray...	K., 1877 ...	2,028	405	1,894	24,686	Bromley...	North Western or Dartford Division
	St. Paul's Cray	K., 1877 ...	1,654	239	1,207	8,520	Bromley...	North Western or Dartford Division
	West Wickham	K., 1877 ...	2,660	259	1,328	10,742	Bromley...	Western or Sevenoaks Division
Chislehurst Urban District	Chislehurst ...	K.,1860,1864	2,791	1,403	7,429	79,785	Bromley...	Western or Sevenoaks Division
Dartford Urban District	Dartford ...	K.,1860,1864	4,243	3,044	18,644	121,360	Dartford...	North Western or Dartford Division
Dartford Rural District †	Crayford ...	K.,1860,1864	2,455	1,272	6,572	32,266	Dartford...	North Western or Dartford Division
	Darenth ...	K., 1877 ...	2,223	191	3,493	25,072	Dartford...	North Western or Dartford Division
	Eynsford ...	K., 1877 ...	3,544	404	2,004	10,345	Dartford...	North Western or Dartford Division
	Farningham ...	K., 1877 ...	2,739	242	1,328	6,594	Dartford...	North Western or Dartford Division
	Horton Kirby...	K., 1888 ...	2,841	314	1,884	14,228	Dartford...	North Western or Dartford Division
	Lullingstone ...	K., 1888 ...	1,557	15	97	2,737	Dartford...	North Western or Dartford Division
	Southfleet ...	K., 1888 ...	2,409	222	1,111	6,268	Dartford...	North Western or Dartford Division
	Stone	K., 1877 ...	3,009	852	5,131	27,774	Dartford...	North Western or Dartford Division
	Sutton-at-Hone	K., 1877 ...	3,625	879	4,650	36,285	Dartford...	North Western or Dartford Division
	Swanscombe ...	K., 1877 ...	2,141	1,329	6,975	34,950	Dartford...	North Western or Dartford Division
	Wilmington ... (6 other parishes not in Board's area)	K., 1877 ...	1,718	402	1,932	12,615	Dartford...	North Western or Dartford Division
Erith Urban District	Erith	K.,1860,1864	3,854	4,291	25,296	168,263	Dartford...	North Western or Dartford Division
Foots Cray Urban District	Foots Cray ...	K., 1877 ...	762	1,164	5,817	48,471	Bromley...	North Western or Dartford Division
Penge Urban District	Penge	L., 1848 ; W. M., 1806 ; S. & V., 1834	770	3,773	22,465	169,499	Croydon ...	Dulwich Division of Camberwell Parliamentary Borough
Sevenoaks Rural District (*d*) †	Brasted ‖ ...	K., 1888 ...	1,760 (*ex 4,449*)	111 (*ex 278*)	540 (*ex 1,304*)	8,909	Sevenoaks	Western or Sevenoaks Division
	Chevening ‖ ...	K., 1888 ...	1,114 (*ex 3,893*)	3 (*ex 236*)	15 (*ex 1,074*)	6,187	Sevenoaks	Western or Sevenoaks Division
	Halstead ...	K., 1888 ...	923	111	595	3,865	Sevenoaks	Western or Sevenoaks Division
	Shoreham ...	K., 1888 ...	5,599	352	1,515	16,753	Sevenoaks	Western or Sevenoaks Division
	Sundridge ‖ ...	K., 1888 ...	1,395 (*ex 4,141*)	3 (*ex 334*)	240 (*ex 1,724*)	6,841	Sevenoaks	Western or Sevenoaks Division
	Westerham ... (11 other parishes not in Board's area. Otford may be added upon requisition of Sevenoaks R.D.C.)	K., 1888 ...	5,804	623	2,905	16,585	Sevenoaks	Western or Sevenoaks Division
1 Borough ... 7 Urban Districts 3 Rural Districts	39	Total statutory area in Kent	100,924	37,402	207,710	1,647,298	4	3

† Not directly represented

‖ The figures in ordinary type refer to the part of the parish in the Board's area of

Hundred. (10)	Petty Sessional Division. (11)	County Court District. (12)	Police. (13)	Remarks. (14)
Ruxley	Bromley	Bromley	County	
Blackheath	Bromley	Bromley	Metropolitan R Div. (Greenwich)	Formerly part of Eltham ancient parish. Referred to as Nottingham in North Kent W. Act, 1860, sec. 69.
Ruxley	Bromley	Bromley	Do.	
Ruxley	Bromley	Bromley	Do.	Includes New Town.
Ruxley	Bromley	Bromley	Do.	Includes part of Crockenhill.
Ruxley	Bromley	Bromley	Do.	
Ruxley	Bromley	Bromley	Do.	
Ruxley	Bromley	Bromley	Metropolitan P and R Div.	District Council established by Local Government Board Order, 1st April, 1900. Detached part of Foots Cray added in 1882. Includes Prick End.
Dartford and Wilmington	Dartford	Dartford	County	Local Board established 1850.
Little and Lessness	Dartford	Dartford	Metropolitan R Div. (Greenwich)	Includes North End and Perry Street.
Axton	Dartford	Dartford	County	Includes part of Green Street Green.
Axton	Darftord	Dartford	County	
Axton	Dartford	Dartford	County	
Axton	Dartford	Dartford	County	Includes Dean Bottom and South Darenth.
Axton	Dartford	Dartford	County	
Axton	Dartford	Dartford	County	Includes Betsham, Hook Green, and Westwood.
Axton	Dartford	Dartford	County	
Axton	Dartford	Dartford	County	
Axton	Dartford	Dartford	County	Includes Greenhithe and Milton Street.
Dartford and Wilmington	Dartford	Dartford	County	
Little and Lessness	Dartford	Dartford	Metropolitan R Div. (Greenwich)	Local Board established 1876.
Ruxley	Bromley	Bromley	Metropolitan R Div. (Greenwich)	District Council established by Local Government Board Order, 1st April, 1902. Includes Sidcup.
Brixton	Penge	Croydon	Metropolitan P Div. (Camberwell)	Once a detached part of Battersea. Formerly in Lewisham district for Local Government purposes. Urban District established in 1899. Includes Anerley and parts of South and Upper Norwood.
Brasted	Sevenoaks	Sevenoaks	County	Includes Tors Hill.
Codsheath	Sevenoaks	Sevenoaks	County	Includes Bastead, Chipstead, and Woodlands.
Codsheath	Sevenoaks	Sevenoaks	County	
Codsheath	Sevenoaks	Sevenoaks	County	
Codsheath	Sevenoaks	Sevenoaks	County	Includes Ide Hill.
Westerham and Edenbridge	Sevenoaks	Sevenoaks	County	Includes Crockham Hill and Froghole.
10	4	5		*Kent County.*—Total acreage, 976,881; population (1901), 936,879; rateable value, 1st June, 1907, £6,055,557.

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n the Water Board.
pply, and the figures in italics to the whole parish. See notes at p. 660.

Local Government (Public Health) Area. (1)	Constituent parish or parishes. (2)	Act of Authorisation (or Confirmation) of supply to parish. (3)	Acreage of parish (Census, 1901). (4)	Inhabited houses in parish (Census, 1901). (5)	Population in parish (Census, 1901). (6)	Rateable value of whole parish, 1907. (7)	Poor Law Union. (8)	Parliamentary Division or Parliamentary Borough. (9)
MIDDLESEX						£		
Acton Urban District	Acton ...	G. J., 1861; W. M., 1866	2,305	6,086	37,744	363,832	Brentford	Ealing Division...
Brentford Urban District	New Brentford	G. J., 1852; W. M., 1806	217	407	2,029	15,667	Brentford	Brentford Division
	Old Brentford	G. J., 1852, 1878; W. M., 1806	874	2,507	13,142	88,483	Brentford	Brentford Division
Chiswick Urban District	Chiswick ...	G. J., 1861; W. M., 1806	1,249	5,073	29,809	241,856	Brentford	Ealing Division...
Ealing Borough ...	Ealing ...	G. J., 1852, 1861, 1878; W. M., 1806	2,947	5,991	33,031	427,791	Brentford	Ealing Division...
Edmonton Urban District	Edmonton ...	N. R., 1852, 1854	3,894	7,795	46,899	208,392	Edmonton	Enfield Division
Enfield Urban District (e)	Enfield ‖ ...	N. R., 1852, 1854	11,267 (*ex* *12,601*)	7,792 (*ex* *7,982*)	41,720 (*ex* *42,738*)	256,299	Edmonton	Enfield Division
Finchley Urban District (e) †	Finchley ‖ ...	Met. Water, 1902, secs. 3 and 35 (2)	9 (*ex* *3,384*)	1 (*ex* *3,949*)	6 (*ex* *22,126*)	209,819	Barnet ...	Hornsey Division
Friern Barnet Urban District (see note (*c*) page 112).								
Hampton Urban District	Hampton ...	G. J., 1861	2,036	1,344	6,813	123,166	Kingston	Uxbridge Division
Hampton Wick Urban District	Hampton Wick	G. J., 1861	1,314	520	2,606	23,463	Kingston	Uxbridge Division
Hanwell Urban District	Hanwell ...	G. J., 1878; W. M., 1806	1,067	1,781	10,438	81,331	Brentford	Brentford Division (detached part in Ealing Division)
Hendon Urban District (*f*) †	Hendon ‖ ...	W. M., 1866	3,752 (*ex* *8,382*)	2,386 (*ex* *3,379*)	15,819 (*ex* *22,450*)	194,489	Hendon...	Harrow Division
Heston and Isleworth Urban District	Heston ...	G. J., 1878; W. M., 1806	3,709	1,865	10,989	68,527	Brentford	Brentford Division
	Isleworth ...	G. J., 1861, 1878; W. M., 1806	3,150	3,819	19,874	142,078	Brentford	Brentford Division
Hornsey Borough ...	Hornsey ...	N. R., 1852	2,875	12,571	72,056	662,700	Edmonton	Hornsey Division
Southgate Urban District	Southgate ...	N. R., 1852, 1854	3,597	2,818	14,993	184,464	Edmonton	Enfield Division
Southall Norwood Urban District (*g*) †	Norwood (Precinct of) ‖	G. J., 1878	109 (*ex* *2,575*)	471 (*ex* *1,911*)	2,460 (*ex* *13,200*)	127,114	Uxbridge	Brentford Division
Staines Rural District †	Hanworth ... (9 other parishes not in Board's area)	G. J., 1861	1,373	443	2,159	30,922	Staines ...	Uxbridge Division
Sunbury-on-Thames Urban District (*h*)	Sunbury ...	Met. Water, 1902, sch. 2	2,659	938	4,544	36,657	Staines ...	Uxbridge Division
Teddington Urban District	Teddington...	G. J., 1861	1,214	2,754	14,037	111,200	Kingston	Uxbridge Division
Tottenham Urban District	Tottenham ...	E. L., 1807, 1853; N. R., 1852, 1854	3,013	16,519	102,541	518,430	Edmonton	Tottenham Division

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† Not directly represented

‖ The figures in ordinary type refer to the part of the parish in the Board's area

Hundred. (10)	Petty Sessional Division. (11)	County Court District. (12)	Police. (13)	Remarks. (14)
Ossulstone (Kensington Div.)	Willesden	Brentford	Metropolitan X Div. (Kilburn), T Div. (Hammersmith), West London Police Court	Local Board formed in 1866. By Local Government Board Order, 1894, parts of Acton and Brentford were inter-transferred, and in 1895, parts of Acton and Willesden.
Elthorne ...	Brentford	Brentford	Metropolitan T Div. (Hammersmith)	Formed out of Hanwell parish. Brentford has been the County town since 1701.
Elthorne ...	Brentford	Brentford	Metropolitan T Div. (Hammersmith)	Formed out of Ealing parish. Local Board established in 1874.
Ossulstone (Kensington Div.)	Willesden	Brentford	Metropolitan T Div. (Hammersmith)	Under Chiswick Improvement Commissioners from 1869 to 1884, when Local Board formed; Urban District in 1894. Includes Bedford Park, Grove Park, Gunnersbury, and Turnham Green.
Ossulstone (Kensington Div.)	Brentford	Brentford	Metropolitan X Div. (Kilburn)	Local Board formed in 1863. By Local Government Board Order, 1885, boundaries altered by interchange with Brentford. Incorporated by Charter, 3rd June, 1901. Includes Drayton Green.
Edmonton ...	Edmonton	Edmonton	Metropolitan N Div. (Islington) and Y Div. (Highgate)	Ancient parish. Local Board established June, 1859. By Edmonton Local Board (Division of District) Act, 1881, divided into two Urban Districts of Edmonton and Southgate. By the London (Clerkenwell Detached) Order in Council, 1900, the detached part of Clerkenwell in Middlesex was added to Hornsey. See also the Order in Council confirming the Edmonton and Holborn Unions (Adjustment) Scheme, 1906.
Edmonton ...	Edmonton	Edmonton	Metropolitan N Div. (Islington) and Y Div. (Highgate)	Local Board formed June, 1850. In 1894 part of Enfield Urban District transferred to Southgate Urban District. Includes the Chase, Ponder's End, and Cockfosters.
Ossulstone (Finsbury Division)	Highgate...	Barnet ...	Metropolitan S Div. (Hampstead) and Y Div. (Highgate)	Includes Church End and part Whetstone.
Spelthorne...	Spelthorne	Kingston...	Metropolitan T Div. (Hammersmith)	Local Board formed 1890. District includes Hampton Court and Hampton Hill.
Spelthorne...	Spelthorne	Kingston ..	Metropolitan T Div. (Hammersmith)	Local Board formed 1863.
Elthorne ...	Brentford	Brentford	Metropolitan X Div. (Kilburn)	Local Board formed August, 1885.
Gore	Gore ...	Barnet ...	Metropolitan S Div. (Hampstead) and X Div. (Kilburn)	Local Board formed 1879. District includes Mill Hill, Golder's Green, The Hyde, Child's Hill, and Cricklewood (part).
Isleworth ...	Brentford	Brentford	Metropolitan T Div. (Hammersmith)	Heston and Isleworth (including Hounslow, Lampton, Spring Grove, and Sutton) formed into a Local Board District in 1875. In 1895 part of Urban District transferred to Southall Norwood Urban District.
Isleworth ...	Brentford	Brentford...		
Ossulstone (Finsbury Division)	Highgate...	Clerkenwell	(Metropolitan Y Div. (Highgate)	Local Board formed August, 1867. By Local Government Board Order, 1891, detatched part added to Friern Barnet. Under London Government Act, 1399, and the London (Clerkenwell Detached) Order in Council, 1900, detached part of Clerkenwell added to Hornsey Urban District. Hornsey includes Crouch End, Fortis Green, Harringay, Muswell Hill, and parts of Highgate and Stroud Green.
Edmonton ...	Edmonton	Edmonton	Metropolitan Y Div. (Highgate)	Formed out of Edmonton parish in 1881. By Order of Middlesex County Council confirmed by Local Government Board Order, Jan., 1892, area extended to include part of Tottenham parish previously in Wood Green district. In 1894 part of Enfield transferred to Southgate. Comprises Bowes Park (part), Palmer's Green, and Winchmore Hill.
Elthorne ...	Brentford	Uxbridge...	Metropolitan X Div. and T Div. (Hammersmith)	Southall is a market town within the precinct of Norwood, which includes Frogmore Green.
Spelthorne..	Spelthorne	Chertsey ...	Metropolitan T Div. (Hammersmith)	Total acreage of district, 18,036; population (1901), 18,095; (1907), 21,824 *est.*
Spelthorne ...	Spelthorne	Chertsey ...	Metropolitan T Div. (Hammersmith)	Constituted an Urban District in 1894. Includes Charlton and Upper Haliford.
Spelthorne...	Spelthorne	Kingston...	Metropolitan T Div. (Hammersmith)	Local Board established in 1867.
Edmonton ...	Edmonton	Edmonton	Metropolitan N Div. (Islington)	Local Board formed in 1850. Wood Green carved out of ancient parish by Tottenham Local Board (Division of District) Act, 1888. Includes The Hale and part of Stamford Hill.

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on the Water Board.
supply, and the figures in italics to the whole parish. See notes at p. 660.

Local Government (Public Health) Area. (1)	Constituent parish or parishes. (2)	Act of Authorisation (or Confirmation) of supply to parish. (3)	Acreage of parish (Census 1901). (4)	Inhabited houses in parish (Census, 1901). (5)	Population in parish (Census, 1901). (6)	Rateable value of whole parish, 1907. (7)	Poor Law Union. (8)	Parliamentary Division or Parliamentary Borough. (9)
MIDDLESEX—contd.						£		
Twickenham Urban District	Twickenham ...	G. J., 1861	2,421	4,205	20,991	199,597	Brentford	Brentford Division
Willesden Urban District	Willesden ...	W. M., 1866	4,384	16,045	114,811	831,267	Willesden	Harrow Division
Wood Green Urban District	Wood Green ...	E. L., 1807; N. R., 1852, 1854	1,625	6,048	34,233	254,505	Edmonton	Tottenham Division
2 Boroughs ... 19 Urban Districts 1 Rural District...	24	Total statutory area of supply in Middlesex	61,060	110,179	653,744	5,402,049	8	7
SURREY								
Barnes Urban District	Barnes	S. & V., 1884; W. M., 1806	1,027	1,893	10,047	125,737	Richmond	Kingston Division
	Mortlake ...	S. & V. 1884; W. M., 1806	1,584	1,510	7,774	106,224	Richmond	Kingston Division
Carshalton Urban District (*i*) †	Carshalton ‖ ...	Met. Water, 1902, secs. 3 and 34	26 (*ex 2,926*)	2 (*ex 1,330*)	16 (*ex 6,746*)	53,716	Epsom ...	North East Division
Croydon Rural District (*i*) †	Merton	L., 1848 ...	1,762	937	4,510	72,219	Croydon	North East Division
	Mitcham ...	L., 1848 ...	2,912	2,599	14,903	113,547	Croydon	North East Division
	Morden ‖ (*i*) ... (6 other parishes not in Board's area)	L., 1848 ...	73 (*ex 1,475*)	1 (*ex 183*)	8 (*ex 960*)	8,171	Croydon	North East Division
	Kingston ...	L., 1848 ...	1,133	6,497	34,375	235,008	Kingston	Kingston Division
Kingston Borough	East Molesey ...	L., 1871 ...	781	1,037	5,119	44,063	Kingston	Mid. or Epsom Division
East and West Molesey Urban District	West Molesey ...	L., 1871 ...	737	181	915	32,773	Kingston	Mid. or Epsom Division
Epsom Rural District (*i*) †	Chessington (*i*)	Met. Water, 1902, sch. 2	1,702	110	521	3,012	Epsom ...	Mid. Division ...
	Cheam (*i*) ‖ ...	Met. Water, 1902, secs. 3 & 34	30 (*ex 1,909*)	144 (*ex 682*)	792 (*ex 3,404*)	34,837	Epsom ...	Mid. Division ...
	Cuddington (*i*) ‖	Met. Water, 1902, secs. 3 & 34	234 (*ex 1,860*)	45 (*ex 139*)	315 (*ex 774*)	14,289	Epsom ...	Mid. Division ...
	Ewell (*i*) ‖ ... (8 other parishes not in Board's area)	Met. Water, 1902, secs. 3 & 34	127 (*ex 2,437*)	4 (*ex 553*)	28 (*ex 3,338*)	26,274	Epsom ...	Mid. Division ...
Esher and The Dittons Urban District	Long Ditton ...	L., 1848 ...	903	421	2,080	46,205	Kingston	Mid. or Epsom Division
	Thames Ditton	L., 1848 ...	2,981	1,038	4,986	69,196	Kingston	Mid. or Epsom Division
	Esher	L., 1848 ...	2,094	506	2,423	36,704	Kingston	Mid. or Epsom Division
Godstone Rural District (*j*) †	Tatsfield (*j*) ‖ (13 other parishes not in Board's area)	K., 1902 ...	902 (*ex 1,304*)	100 (*ex 143*)	400 (*ex 607*)	3,658	Godstone	South Eastern Division
Ham Urban District	Ham	S. & V., 1884	1,871	285	1,460	9,505	Kingston	Kingston Division
The Maldens and Coombe Urban District	Coombe.. ...	L. 1848 ...	1,337	175	875	21,524	Kingston	Kingston Division

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† Not directly represented

‖ The figures in ordinary type refer to the part of the parish in the Board's area of

Hundred. (10)	Petty Sessional Division. (11)	County Court District. (12)	Police. (13)	Remarks. (14)
Isleworth	Brentford	Brentford	Metropolitan T Div. (Hammersmith)	Local Board established 1868. Includes Whitton.
Ossulstone (Kensington Division)	Willesden	Marylebone	Metropolitan X Div. (Kilburn)	Local Board established 1875. Area extended by Local Government Board Order, 1883, confirming agreement as to boundaries under Willesden Local Board Act, 1876. There was an interchange of areas with Paddington and Acton in 1895 under Local Government Board Order, 1894. Includes Brondesbury, Harlesden, Neasden, and parts of Cricklewood, Kensal Green, and Kilburn.
Edmonton	Edmonton	Edmonton	Metropolitan Y Div. (Highgate)	Constituted a civil parish in 1895. See Tottenham, above. Includes Noel Park.
6	6	8		*Middlesex County.*—Total acreage, 148,700 ; population (June, 1906), 1,015,059 ; (1901), 792,314 ; rateable value, 1 June, 1907, £6,151,498.
Brixton ...	Mortlake...	Wandsworth	Metropolitan V Div. (Wandsworth)	Local Board for Barnes and part of Mortlake established 1893. In 1901 part of Putney, without houses or population, was added to Barnes civil parish under London Government Act, 1899. Barnes includes Castelnau, and Mortlake includes East Sheen.
Brixton ...	Mortlake...	Wandsworth		
Wallington	Croydon ...	Epsom ...	Metropolitan W Div. (Clapham)	Local Board established June, 1883.
Brixton ...	Wimbledon	Croydon ...	Metropolitan V Div. (Wandsworth) and W Div. (Clapham)	
Wallington	Croydon ...	Croydon ...	Metropolitan V Div. (Wandsworth) and W Div. (Clapham)	
Wallington	Croydon ...	Croydon ...	Metropolitan V Div. (Wandsworth) and W Div. (Clapham)	Detached part of Mitcham was transferred to Tooting Graveney parish in Wandsworth Borough in March, 1901, under the London Government Act, 1899.
Kingston...	Kingston Borough	Kingston...	Metropolitan V Div. (Wandsworth)	Includes Canbury and Norbiton.
Elmbridge	Kingston...	Kingston...	Metropolitan V Div. (Wandsworth)	Local Board for East Molesey established in 1867.
Elmbridge	Kingston...	Kingston...	Metropolitan V Div. (Wandsworth)	West Molesey added to Urban District by Local Government Board Order, 1895. East Molesey includes Kent Town.
Copthorne	Epsom ...	Epsom ...	Metropolitan V Div. (Wandsworth) and W Div. (Clapham)	Rushett, an outlying part of Malden, was added in 1884 under the Divided Parishes Act.
Wallington	Epsom ...	Epsom ...	Metropolitan V Div. (Wandsworth) and W Div. (Clapham)	
Copthorne	Epsom ...	Epsom ...	Metropolitan V Div. (Wandsworth) and W Div. (Clapham)	Worcester Park mainly in Cuddington ; parts in Cheam and Malden.
Copthorne	Epsom ...	Epsom ...	Metropolitan V Div. (Wandsworth) and W Div. (Clapham)	
Kingston...	Kingston...	Kingston...	Metropolitan V Div. (Wandsworth)	Urban District constituted by Local Government Board Order, 1895.
Kingston (part) Elmbridge (part)	Kingston...	Kingston...	Metropolitan V Div. (Wandsworth)	Includes Clay Gate and Weston Green.
Elmbridge	Kingston...	Kingston...	County, Horsham Div.	
Tandridge	Godstone...	Croydon ...	County, Godstone Div.	
Kingston...	Kingston...	Kingston...	Metropolitan V Div. (Wandsworth)	In 1894 part of Ham civil parish added to Ham Common Urban District which was renamed Ham Urban District.
Kingston...	Kingston...	Kingston...	Metropolitan V Div. (Wandsworth)	Local Board formed in 1867. In 1895 Malden and part of Coombe added to New Malden Urban District which was renamed as now. District includes Kingston Hill and Norbiton Common.

on the Water Board.
supply, and the figures in italics to the whole parish. See notes at p. 660.

Local Government (Public Health) Area. (1)	Constituent parish or parishes. (2)	Act of Authorisation (or Confirmation) of supply to Parish. (3)	Acreage of parish (Census, 1901). (4)	Inhabited houses in parish (Census, 1901). (5)	Population in parish (Census, 1901). (6)	Rateable value of whole parish, 1907. (7)	Poor Law Union. (8)	Parliamentary Division or Parliamentary Borough. (9)
SURREY—contd.						£		
The Maldens and Coombe Urban District (*contd*).	Malden... ...	L., 1848 ...	842	109	508	6,036	Kingston	Mid. or Epsom Division
	New Malden ...	L., 1848 ...	1,041	989	4,850	70,991	Kingston	Kingston Division
Surbiton Urban District	Hook	L., 1848 ...	492	117	578	3,220	Kingston	Mid. or Epsom Division
	Surbiton ...	L., 1848 ...	1,356	2,280	11,981	163,232	Kingston	Kingston Division
	Tolworth ...	L., 1848 ...	1,198	477	2,458	21,362	Kingston	Mid. or Epsom Division
Wimbledon Borough	Wimbledon ...	L., 1848; S. & V., 1884	3,221	7,553	41,652	447,140	Kingston	North East Division
2 Boroughs ... 7 Urban Districts 3 Rural Districts	25	Total statutory area of supply in Surrey ...	30,273	29,010	153,574	1,768,643	5	4

Local Government Area. (1)	Constituent parishes. (2)	Act of Authorisation (or Confirmation) of supply to parish. (3)	Acreage of parish (Census, 1901). (4)	Inhabited houses in parish (Census, 1901). (5)	Population in parish (Census, 1901). (6)	Rateable value, 1907.* (7)	Poor Law Union. (8)	Parliamentary Division or Parliamentary Borough. (9)
LONDON.						£		
City of London (*k*)	112 Parishes and the 2 Temples	E. L., 1807, 1853, N.R., 1619, 1852	673	3,865	26,923	5,373,276	City of London	City of London
Battersea Metropolitan Borough	Battersea ...	L., 1848. S. & V., 1834, 1852. W. M., 1806	2,160	23,462	168,907	1,064,409	Wandsworth	Battersea Div. and part of Clapham Div. of Battersea and Clapham Borough
Bermondsey Metropolitan Borough	St. Mary Magdalen, Bermondsey	K., 1811. L., 1848. S. & V., 1805, 1834, 1852	626	9,793	82,483	945,951	Bermondsey	Bermondsey & Rotherhithe Divs. of Southwark Borough
	St. John Horselydown St. Olave and St. Thomas, Southwark	L., 1848. S. & V., 1805, 1834, 1852	122	905	9,817		Bermondsey	Rotherhithe Div. of Southwark Borough
	St. Mary, Rotherhithe	K., 1809. L., 1848. S. & V., 1805, 1834, 1852	752	5,119	38,460		Bermondsey	Rotherhithe Div. of Southwark Borough
			1,500	15,817	133,760	945,951		
Bethnal Green Metropolitan Borough	St. Matthew, Bethnal Green	E. L., 1748, 1807, 1853	759	14,005	129,680	549,573	Bethnal Green	North East Bethnal Green Division South West Bethnal Green Div. of Bethnal Green Borough
Camberwell Metropolitan Borough	St. Giles, Camberwell	K., 1811. L. 1848. S. & V., 1805 1852	4,480	36,671	259,339	1,363,246	Camberwell	North Camberwell, Peckham, & Dulwich Divs. of Camberwell Borough

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* Valuation List, 1905, as altered by Supplemental

† For the Hundreds, see Cols. 9 and 10 of the statement relating to the adjoining

Hundred. (10)	Petty Sessional Division. (11)	County Court District. (12)	Police. (13)	Remarks. (14)
Kingston ...	Kingston	Kingston ...	Metropolitan V Div. (Wandsworth)	
Kingston ...	Kingston	Kingston ...	Metropolitan V Div. (Wandsworth)	
Kingston ...	Kingston	Kingston ...	Metropolitan V Div. (Wandsworth)	
Kingston ...	Kingston	Kingston ...	Metropolitan V Div. (Wandsworth)	Separated from Kingston by the Surbiton Improvement Act, 1855. By Local Government Board Order, 1894, part of Kingston civil parish added to Surbiton Urban District, the part of Kingston civil parish within the Urban District being created Surbiton civil parish by County Council Order. By Local Government Board Order, 1895, the civil parishes of Hook and Tolworth and part of Coombe added to the Urban District, the last named being added to Surbiton civil parish.
Kingston ...	Kingston	Kingston ...	Metropolitan V Div. (Wandsworth)	Formerly a hamlet of Long Ditton, constituted a civil parish by Local Government Board Order in 1895.
Brixton ...	Wimbledon	Kingston ...	Metropolitan V Div. (Wandsworth)	Local Board established May, 1866. In 1898 part of Merton civil parish added to Wimbledon. Incorporated by Charter 1905. Includes Cottenham Park.
7	5	4		*Surrey County.*—Total acreage, 452,796; population (1907) est. 615,427; (1901) 519,654; rateable value, 1st June, 1907, £5,013,220.

County Parliamentary Division.† (10)	Petty Sessional Division. (11)	County Court District. (12)	Police Division and Police Court. (13)	Remarks. (14)
Hornsey Division of Middlesex	City of London	Guildhall ...	City Police (Mansion House; Guildhall)	
N. E. or Wimbledon Div. of Surrey	Wandsworth	Wandsworth...	V and W Divs. (Westminster P.C.; South Western P.C.)	Includes Nine Elms, Clapham Junction, and parts of Clapham and Wandsworth Commons
N. E. or Wimbledon Div. of Surrey	Newington	Southwark ...	M Div. (Tower Bridge P.C.)	By the Borough of Bermondsey (Union of Parishes) Scheme, 1903, the constituent parishes were united as the parish of Bermondsey.
N. E. or Wimbledon Div. of Surrey	Newington	Southwark ...	M Div. (Tower Bridge P.C.)	St. Olave and St. Thomas united by Local Government Board Order, 1896.
N. E. or Wimbledon Div. of Surrey	Newington	Southwark ...	M Div. (Tower Bridge P.C.)	
Tottenham Division of Middlesex	Tower ...	Shoreditch ... Whitechapel	H, J, K Divs. (Thames P.C.; Old Street P.C.)	Includes Cambridge Heath, and parts of Old Ford and Victoria Park.
N. E. or Wimbledon Div. of Surrey	Newington	Greenwich ... Lambeth	L, M, R, P and W Divs. (Greenwich P.C.; Lambeth P.C.)	Includes Goose Green, Hatcham, Honor Oak, Lordship Lane, Newlands, Peckham, Waverley Park, and parts of Denmark Hill, Herne Hill, and Nunhead.

Lists, 6th April, 1907. Includes Government property.
Counties; showing the respective County Parliamentary Divisions and the Hundreds.

Local Government Area. (1)	Constituent parishes. (2)	Act of Authorisation (or Confirmation) of supply to parish. (3)	Acreage of parish (Census, 1901). (4)	Inhabited houses in parish (Census, 1901). (5)	Population in parish (Census, 1901). (6)	Rateable value, 1907.* (7)	Poor Law Union. (8)	Parliamentary Division or Parliamentary Borough. (9)
LONDON— continued.								
Chelsea Metropolitan Borough	St. Luke, Chelsea	C., 1852 ... W. M., 1806	660	8,641	73,842	£ 914,336	Chelsea ...	Chelsea Parliamentary Borough
Deptford Metropolitan Borough	St. Paul, Deptford	K., 1809. S. & V., 1805, 1845, 1852	1,563	15,823	10,398	641,341	Greenwich	Deptford Borough
Finsbury Metropolitan Borough (*l*)	St. James and St. John, Clerkenwell	N. R., 1852	317	6,006	63,704	457,429	Holborn ...	Central Finsbury Division of Finsbury Borough
	Charterhouse (*l*)	N. R., 1619, 1852	35	268	2,384	14,329	Holborn ...	East Finsbury Division of Finsbury Borough
	Glasshouse Yard	N. R., 1619, 1852				16,725	Holborn ...	East Finsbury Division of Finsbury Borough
	St. Sepulchre	N. R., 1852				66,084	Holborn ...	East Finsbury Division of Finsbury Borough
	St. Luke, Middlesex	E. L., 1807. N. R., 1852	237	3,006	35,375	473,104	Holborn ...	East Finsbury Division of Finsbury Borough
			589	9,280	101,463	1,027,671		
Fulham Metropolitan Borough	Fulham ...	C., 1852 ... W. M., 1806	1,703	18,534	137,289	897,634	Fulham ...	Fulham Borough
Greenwich Metropolitan Borough (*m*)	Charlton	K., 1811 ...	1,991	3,167	21,134	139,889	Woolwich	Greenwich Borough
	Kidbrooke						Woolwich	Greenwich Borough
	Greenwich ...	K., 1809 ...	1,749	10,200	67,315	442,668	Greenwich	Greenwich Borough
	Deptford St. Nicholas	K., 1809. S. & V., 1805, 1845	112	873	7,321	68,097	Greenwich	Greenwich Borough
			3,852	14,240	95,770	650,654		
Hackney Metropolitan Borough	St. John at Hackney	E. L., 1807, 1853. N. R., 1852	3,289	30,634	219,272	1,228,049	Hackney...	Central Hackney, North Hackney and South Hackney Divs. of Hackney Borough
Hammersmith Metropolitan Borough	St. Peter and St. Paul, Hammersmith	C., 1852. G. J., 1852. W. M., 1806	2,286	15,198	112,239	809,569	Hammersmith	Hammersmith Borough
Hampstead Metropolitan Borough	St. John, Hampstead	N. R., 1852. W. M., 1866	2,265	11,294	81,942	1,083,175	Hampstead	Hampstead Parliamentary Borough

* Valuation List, 1905, as altered by Supplemental

† For the Hundreds see Cols. 9 and 10 of the statement relating to the adjoining

County Parliamentary Division.† (10)	Petty Sessional Division. (11)	County Court District. (12)	Police Division and Police Court. (13)	Remarks. (14)
Ealing Div. of Middlesex	Kensington	Brompton...	B Div. (Westminster P.C.)	
Western or Sevenoaks Div. of Kent N.E. or Wimbledon Div. of Surrey	Newington Blackheath	Lambeth ... Greenwich...	M, P and R Divs. (Greenwich P.C.)	Includes Hatcham, New Cross, and parts of Brockley and St. John's.
Hornsey Division of Middlesex	Finsbury	Clerkenwell Shoreditch	G Div. (Clerkenwell P.C.)	Includes part Pentonville.
Hornsey Division of Middlesex	Finsbury		G Div. (Clerkenwell P.C.)	
Hornsey Division of Middlesex	Finsbury		G Div. (Clerkenwell P.C.; Old Street P.C.)	By Finsbury Order in Council, 1900, Glasshouse Yard constituted a separate parish.
Hornsey Division of Middlesex	Finsbury		G Div. (Clerkenwell P.C.; Old Street P.C.)	
Hornsey Division of Middlesex	Finsbury		G Div. (Clerkenwell P.C.; Old Street P.C.)	
Ealing Division of Middlesex	Kensington	Brompton...	T Div. (West London P.C.)	Includes North End, Parson's Green, Sand End, Walham Green, West Brompton, Wes Kensington, and part Earl's Court.
N.W. or Dartford Div. of Kent	Blackheath	Greenwich	R Div. (Woolwich P.C.)	By the Borough of Greenwich (Charlton and Kidbrooke) Scheme, 1901, Charlton and Kidbrooke were united as one parish.
Do.	Blackheath	Greenwich	R Div. (Woolwich P.C.)	
Do.	Blackheath	Greenwich	R Div. (Greenwich P.C.)	
Do.	Blackheath	Greenwich	R Div. (Greenwich P.C.)	
Tottenham Div. of Middlesex	Tower ...	Shoreditch	N and J Div. (North London P.C.)	Includes Clapton, De Beauvoir Town, Homerton, London Fields, Shacklewell, and parts of Dalston, Kingsland, Lea Bridge, Stamford Hill, and Victoria Park.
Ealing Division of Middlesex	Kensington	Brompton... Marylebone	T and X Divs. (West London P.C.)	Includes Brook Green, College Green, Ravenscourt Park, Shepherd's Bush, Starch Green, Wormwood Scrubbs.
Harrow Division of Middlesex	Holborn ...	Bloomsbury Marylebone	S Div. (Marylebone P.C.; Holborn Petty Sessional Division)	Includes Belsize Park, Frognal, Primrose Hill, Rosslyn Park, Swiss Cottage, and parts of Chalk Farm, Child's Hill, Cricklewood, Haverstock Hill, Kilburn, St. John's Wood.

ists, 6th April, 1907. Includes Government property.
ounties showing the respective County Parliamentary Divisions and the Hundreds.

Local Government Area. (1)	Constituent parishes. (2)	Act of Authorisation (or Confirmation) of supply to parish. (3)	Acreage of parish (Census, 1901). (4)	Inhabited houses in parish (Census, 1901). (5)	Population in parish (Census, 1901). (6)	Rateable value, 1907.* (7)	Poor Law Union. (8)	Parliamentary Division or Parliamentary Borough. (9)
LONDON—continued.						£		
Holborn Metropolitan Borough	Furnival's Inn	N.R.,1619, 1852	131	1,858	25,347	7,429	Holborn ...	City of London Holborn Division of Finsbury Borough
	Gray's Inn ...	N. R., 1852				17,064	Attached to St. Giles & St. George for assessment	Holborn Division.
	Staple Inn ...	N. R., 1852				3,877	Holborn ...	City of London (part) Holborn Division
	St. Andrew above Bars, Holborn, and St. George the Martyr	N. R., 1852				251,581 74,097	Holborn ...	Holborn Division
	Lincoln's Inn	N. R., 1852	244	2,617	31,497	34,169	Attached to St. Giles & St. George for assessment	Holborn Division
	St. Giles in the Fields and St. George, Bloomsbury	C., 1852 W.M.,1810 N. R., 1852				235,028 303,189	St. Giles & St. George	Holborn Division
	Saffron Hill, Hatton Garden, Ely Rents, Ely Place	N. R., 1852	30	228	2,561	120,547	Holborn ...	Holborn Division
			405	4,703	59,405	1,046,981		
Islington Metropolitan Borough	St. Mary, Islington	E. L., 1807 N.R.,1852	3,091	38,645	334,991	1,953,325	Islington...	North, South, East and West Divs. of Islington Borough
Kensington Royal Borough	St. Mary Abbotts, Kensington	C., 1852. G. J., 1852. W.M.,1806	2,291	22,131	176,628	2,389,109	Kensington	North Kensington Div. South Kensington Div. of Kensington Borough
Lambeth Metropolitan Borough	St. Mary, Lambeth	L., 1785, 1848. S. & V., 1805, 1834, 1854	4,080	41,511	301,895	1,955,207	Lambeth...	North Lambeth Div., Kennington Div., Brixton Div. and Norwood Div. of Lambeth Borough
Lewisham Metropolitan Borough	Lee	K., 1809 ...	1,254	3,229	18,649	1,056,481	Lewisham	Lewisham Borough
	Lewisham ...	K.,1809. L., 1848. S. & V., 1894	5,760	19,521	108,846		Lewisham	Lewisham Borough
			7,014	22,750	127,495	1,056,481		
Paddington Metropolitan Borough	Paddington	C., 1852. G. J., 1811, 1852. W. M., 1810	1,356	17,684	143,976	1,549,911	Paddington	North Paddington Div. South Paddington Div. of Paddington Borough
Poplar Metropolitan Borough	Bow	E. L., 1748, 1807, 1853	556	5,691	41,989	841,045	Poplar ...	Bromley and Bow Divs. of TowerHamlets
	Bromley ...	E. L., 1748, 1808, 1853	606	8,872	68,319		Poplar ...	Bromley and Bow Divs. of Tower Hamlets
	Poplar ...	E. L., 1748, 1807, 1853	1,166	8,050	58,514		Poplar ...	Poplar Div. of Tower Hamlets
			2,328	22,613	168,822	841,045		

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* Valuation List, 1905, as altered by Supplemental

† For the Hundreds, see Cols. 9 and 10 of the statement relating to the adjoining

County Parliamentary Division.† (10)	Petty Sessional Division. (11)	County Court District. (12)	Police Division and Police Court. (13)	Remarks. (14)
Hornsey Division of Middlesex	Holborn ...	Clerkenwell and Westminster	D and E Divs. (Bow Street, P.C.)	
Hornsey Division of Middlesex	Holborn ...	Clerkenwell and Westminster		
Hornsey Division of Middlesex	Holborn ...	Clerkenwell and Westminster		
Hornsey Division of Middlesex	Holborn ...	Clerkenwell and Westminster		
Hornsey Division of Middlesex	Holborn ...	Clerkenwell and Westminster		
Hornsey Division of Middlesex	Holborn ...	Bloomsbury		
Hornsey Division of Middlesex	Holborn ...	Bloomsbury		
Hornsey Division of Middlesex	Finsbury... Tower Hamlets	Clerkenwell Shoreditch	G, J, N and Y Divs. (North London P.C.; Clerkenwell P.C.)	Includes Ball's Pond, Canonbury, Holloway, Hornsey Rise, Tufnell Park, Tollington, and parts of Crouch Hill, Pentonville, Highgate, Stroud Green. One side of Baring Street, New North Road, was transferred from Shoreditch under London Government Act, 1899, which transferred part is in Tower Hamlets Petty Sessional Division.
Ealing Div. of Middlesex	Kensington	Brompton Marylebone	A, B, F and X Divs. (West London P.C.)	By Letters Patent dated 20th November, 1901, the title "Royal" was conferred, and the style "The Royal Borough of Kensington." Includes Notting Hill, and part Earl's Court and Queen's Park.
N.E. or Wimbledon Div. of Surrey	Newington	Lambeth ... Southwark	L, P and W Divs. (South Western P.C.; Tower Bridge P.C.; Westminster P.C.; Lambeth P.C.)	Includes Angell Town, Brockwell Park, Gipsy Hill, Knight's Hill, Stockwell, Tulse Hill Vauxhall, and parts of Denmark Hill, West Dulwich, and Herne Hill.
Western or Sevenoaks Div. of Kent	Blackheath	Greenwich	P and R Divs. (Greenwich P.C.)	Includes Grove Park and parts of Blackheath and Lee Green.
Western or Sevenoaks Div. of Kent	Blackheath	Greenwich		By the Borough of Lewisham (Union of Parishes) Scheme, 1904, the two parishes were united to form the one parish of Lewisham. Includes Bell Green, Catford, Crofton Park, Forest Hill, Hither Green, Ladywell, Perry Hill and Perry Vale, Ravensbourne, Rushey Green, Honor Oak Park, Southend, and part Brockley.
Harrow Division of Middlesex	Paddington	Marylebone Brompton	A, F and X Divs. (Marylebone P.C.; Marlborough St. P.C.)	Includes Westbourne Park, and parts of Bayswater, Kilburn, Kensal Green, Maida Vale, Queen's Park, St. Peter's Park. L.G.B. Order, 1894, confirmed agreement between Paddington and Willesden under Willesden Local Board Act, 1876, transferring to Willesden 1 acre with no population.
ottenham Division of Middlesex	Tower ...	Bow ...	J and K Divs. (Old Street P.C.)	By the Borough of Poplar (Union of Parishes) Scheme, 1907, the constituent parishes were united to form the parish of Poplar Borough. Bow (or Stratford le Bow) includes parts of Hackney Wick and Old Ford.
ottenham Division of Middlesex	Tower ...	Bow ...	J and K Divs. (Old Street P.C.)	
ottenham Division of Middlesex	Tower ...	Bow ...	J and K Divs. (Thames P.C.)	Poplar includes Blackwall, Cubitt's Town, Isle of Dogs, and Millwall.

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sts, 6th April, 1907. Includes Government property.

unties, showing the respective County Parliamentary Divisions and the Hundreds.

Local Government Area. (1)	Constituent parishes. (2)	Act of Authorisation (or Confirmation) of supply to parish. (3)	Acreage of parish (Census, 1901). (4)	Inhabited houses in parish (Census 1901). (5)	Population in parish (Census, 1901). (6)	Rateable value, 1907.* (7)	Poor Law Union. (8)	Parliamentary Division or Parliamentary Borough. (9)
LONDON—continued.						£		
St. Marylebone Metropolitan Borough	St. Marylebone	C., 1852. G. J., 1811, 1852. W. M., 1810	1,473	13,536	133,301	1,930,317	St. Marylebone	East Marylebone Div. and West Marylebone Div. of Marylebone Borough
St. Pancras Metropolitan Borough	St. Pancras	N. R., 1852. W. M., 1810	2,694	23,715	235,317	1,805,797	St. Pancras	N.S.E. and W. Divs. of St. Pancras Borough
Shoreditch Metropolitan Borough	Shoreditch ...	E. L., 1807, 1853. N. R., 1852	658	12,743	118,637	809,201	Shoreditch	Hoxton & Haggerston Divs. of Shoreditch Borough
Southwark Metropolitan Borough	Christchurch, Southwark	L., 1848. S. & V., 1834, 1852	78	1,072	11,263	136,107	Southwark	West Southwark Div. of Southwark Borough
	St. Mary, Newington	L., 1848. S. & V., 1805, 1834, 1852	633	13,233	121,863	543,699	Southwark	West Newington & Walworth Div. of Newington Borough
	St. George the Martyr, Southwark	L., 1848. S. & V., 1834, 1852	288	5,502	60,998	341,121	Southwark	West Southwark & Bermondsey Div.
	St. Saviour, Southwark	L., 1848. S. & V., 1834, 1852	132	1,071	12,056	286,749	Southwark	West Southwark Div.
			1,131	20,878	206,180	1,307,676		
Stepney Metropolitan Borough (*n*)	St. Botolph Without, Aldgate	E. L., 1807, 1853. N. R., 1619, 1852	116	423	6,031	63,555	Whitechapel	Tower Hamlets:— Whitechapel Div.
	Tower of London	E. L., 1807, 1853						
	St. John of Wapping					54,921	Stepney	St. George Div.
	St. Anne, Limehouse	E. L., 1748, 1807, 1853	245	4,300	32,369	148,205	Stepney	Limehouse Div.
	Mile End, New Town	E. L., 1748, 1807, 1853	43	1,352	13,259	45,079	Whitechapel	Whitechapel Div.
	Mile End, Old Town	E. L., 1748, 1807, 1843	678	13,746	112,827	444,109	Mile End Old Town	Mile End Old Town Div., Stepney Div.
	Christchurch, Spitalfields	E. L., 1748, 1807, 1853. N. R., 1852	87	1,732	27,969	112,389	Whitechapel	Whitechapel Div.
	Norton Folgate Liberty (*n*)	E. L., 1807, 1853. N. R., 1852				14,908	Whitechapel	Whitechapel Div.
	Old Artillery Ground Liberty (*n*)	E. L., 1807, 1853				11,868	Whitechapel	Whitechapel Div.
	Ratcliffe ..	E. L., 1748, 1807, 1853	111	1,780	14,810	76,8[illegible]	Stepney	Limehouse Div.
	St. George in the East	E. L., 1807, 1853	244	5,007	49,068	212,487	St. George in the East	St. George Div.
	St. Paul, Shadwell	E. L., 1691, 1807, 1853	69	705	8,633	51,825	Stepney	Limehouse Div.
	St. Mary, Whitechapel	E. L., 1748, 1807, 1853. N. R., 1852	173	2,417	33,634	265,575	Whitechapel	Whitechapel Div.
			1,766	31,462	298,600	1,501,782		
Stoke Newington Metropolitan Borough	Stoke Newington	N. R., 1852. E. L., 1807	863	7,717	51,247	353,762	Hackney	North Hackney Div. of Hackney Borough
Wandsworth Metropolitan Borough	Clapham ...	L., 1848. S. & V., 1805, 1852	1,075	8,152	51,361	2,004,518	Wandsworth	Clapham Div. of Battersea and Clapham Borough
	Putney ...	L., 1848. W.M., 1806. S. & V., 1884	2,218	4,048	24,139		Wandsworth	Wandsworth Borough
	Streatham ...	L., 1848. S. & V., 1834	2,823	12,295	71,658		Wandsworth	Wandsworth Borough
	Tooting Graveney	L., 1848 ...	569	2,470	16,473		Wandsworth	Wandsworth Borough
	Wandsworth	L., 1848. W.M., 1806. S & V., 1834, 1852	2,445	10,799	68,403		Wandsworth	Wandsworth Borough
			9,130	37,764	232,034	2,004,518		

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* Valuation List, 1905, as altered by Supplemental

† For the Hundreds see Cols. 9 and 10 of the statement relating to the adjoining

County Parliamentary Division.† (10)	Petty Sessional Division. (11)	County Court District. (12)	Police Division and Police Court. (13)	Remarks. (14)
Harrow Division of Middlesex	St. Marylebone	Bloomsbury ... Marylebone	D and S Divs. (Marylebone P.C.; Marlborough St. P.C.)	Includes Lisson Grove, Portland Town and parts of Maida Vale, Kilburn, and St. John's Wood.
Harrow Division of Middlesex	St. Pancras	Bloomsbury ... Clerkenwell	D, E, G, S and Y Divs. (Clerkenwell P.C.; Marylebone P.C.)	Includes Gospel Oak, Dartmouth Park, Maitland Park, and parts of Chalk Farm, Haverstock Hill, and Highgate.
Tottenham Division of Middlesex	Tower ...	Shoreditch ... Clerkenwell	G and J Divs. (Old Street P.C.; Clerkenwell P.C.)	Includes parts of Dalston and Kingsland.
N. E. or Wimbledon Division of Surrey	Newington	Southwark ...	M Div. (Tower Bridge P.C.)	
Do.	Newington	Lambeth	L & M Div. (Tower Bridge P.C.)	
Do.	Newington	Southwark ...	L & M Div. (Lambeth P.C.)	
Do.	Newington	Southwark ...	M Div. (Tower Bridge P.C.)	
Tottenham Division of Middlesex	Tower ...	Whitechapel	H, J & K Divs. (Old Street P.C. and Thames P.C.)	
Do.	Tower ...	Whitechapel		
Do.	Tower ...	Whitechapel		
Do.	Tower ...	Whitechapel		
Do.	Tower ...	Whitechapel and Bow		
Do.	Tower ...	Whitechapel		Civil parishes of St. Katherine by the Tower and Old Tower Without united to St. Botolph Without by Local Government Board Order, 1895.
Do.	Tower ...	Whitechapel		
Do.	Tower ...	Whitechapel		By the Borough of Stepney (Tower of London) Scheme, 1901, the Tower of London was added to Aldgate parish.
Do.	Tower ...	Whitechapel		Includes Stepney Green and part of Bow Common.
Do.	Tower ...	Whitechapel		
Do.	Tower ...	Whitechapel and Bow		Civil parish of Holy Trinity, Minories, added to Whitechapel by Local Government Board Order, 1895.
Do.	Tower ...	Whitechapel		
Hornsey Division of Middlesex	Stoke Newington	Clerkenwell ... Edmonton	N Div. (North London P.C.)	Includes Clissold Park and South Hornsey.
N. E. or Wimbledon Division of Surrey	Newington	Wandsworth ...	V & W Div. (South Western P.C.)	By the Borough of Wandsworth (Union of Parishes) Scheme, 1903, the five parishes were united to form the Parish of Wandsworth Borough.
Do.	Wandsworth	Wandsworth ...	V Div. (South Western P.C.)	Includes Roehampton.
Do.	Newington	Wandsworth ...	W Div. (South Western P.C.)	Includes Balham, Manor Park, Roupell Park, Upper Tooting, and part Brixton Hill.
Do.	Wandsworth	Wandsworth ...	V and W Div. (South Western P.C.)	Detached part of Mitcham added under Lon. Gov. Act, 1899. Boundary adjusted by Counties of London and Surrey (Wandsworth and Mitcham) Order, 1903.
Do.	Wandsworth	Wandsworth ...	V Div. (South Western P.C.)	Includes Dunt's Hill, Earlsfield, Fawe Park, Garratt, Summers Town.

Lists, 6th April, 1907. Includes Government property.
Counties, showing the respective County Parliamentary Divisions and the Hundreds.

Local Government Area. (1)	Constituent parishes. (2)	Act of Authorisation (or Confirmation) of supply to parish. (3)	Acreage of parish. (Census, 1901). (4)	Inhabited houses in parish (Census, 1901). (5)	Population in parish (Census, 1901). (6)	Rateable value, 1907.* (7)	Poor Law Union. (8)	Parliamentary Division or Parliamentary Borough. (9)
LONDON—contd. Westminster, City of	Liberty of the Rolls	N. R., 1852	9	43	252	£ 57,598	Strand ...	Strand Borough
	St. Anne, Soho	N. R., 1852. C., 1721. W. M. 1810.	53½	835	11,493	217,502	Strand ...	Strand Borough
	St. Clement Danes	N. R., 1852. C., 1721. W. M., 1852	57	514	6,090	270,561	Westminster	Strand Borough
	St. George, Hanover Square	C., 1721, 1852. G. J., 1811, 1852	1,111	8,931	76,957	2,296,630	St. George's	St. George, Hanover Square Borough
	St. James ...	C., 1721, 1852. G. J., 1852. N. R., 1852. W. M., 1806, 1810	163	2,139	21,588	1,051,381	Westminster	Strand Borough
	St. Margaret and St. John	C., 1721, 1852. W. M., 1806	766	4,533	51,068	1,198,793	St. George's	Westminster Borough
	St. Martin-in-the-Fields	C., 1721, 1852. N. R., 1852	286	1,046	12,980	727,552	Strand ...	Strand Borough
	St. Mary-le-Strand	N. R., 1852. C., 1852. W. M., 1810	14½	55	494	55,391	Strand ...	Strand Borough
	St. Paul, Covent Garden	N. R., 1852 C., 1721. W. M., 1810.	26	216	1,692	133,437	Strand ...	Strand Borough
	St. Peter, Collegiate Close	C., 1721, 1852	10	30	231	4,340	St. George's	Westminster Borough
	Savoy Precinct	N. R., 1852 C., 1852	7	24	166	30,600	Strand ...	Strand Borough
			2,503	18,366	183,011	6,043,785		
Woolwich Metropolitan Borough	Eltham ...	K., 1860, 1864	3,760	1,353	7,226	90,136	Lewisham	Woolwich Borough
	Plumstead ...	K., 1811 ...	3,387	11,292	68,327	339,990	Woolwich	Woolwich Borough
	Woolwich...	K., 1811 (South of Thames) E. L., 1853 (North of Thames)	1,130	5,441	41,625	351,063	Woolwich	Woolwich Borough
			8,277	18,086	117,178	781,189		
2 Cities	114 City of London 69 County of London	Totals for Administrative County of London	74,839	571,768	4,536,541	5,373,276 38,505,694	31	58
						43,878 970		
	183							
27 Metropolitan Boroughs								

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* Valuation List, 1905, as altered by Supplemental

† For the Hundreds see Cols. 9 and 10 of the statement relating to the adjoining

County Parliamentary Division.† (10)	Petty Sessional Division. (11)	County Court District. (12)	Police Division and Police Court. (13)	Remarks. (14)
Ealing Div. of Middlesex	Holborn	Westminster and Brompton	A, B, C, D & E Divs. (Westminster P.C.; Marlb'r'ugh Street P.C.; Bow Street P.C.)	
Do.	St. James	Westminster and Brompton		
Do.	Holborn (Duchy part) Strand	Westminster and Brompton		
Do.	Hanover Square	Westminster and Brompton		Includes Belgravia, Mayfair, and part Pimlico.
Do.	St. James	Westminster and Brompton		
Do.	St. Margaret	Westminster and Brompton		By the City of Westminster (St. Margaret and St. John) Scheme, 1901, united to form one civil parish. Includes Bulinga Fen, Thorney Island, Petty France, Knightsbridge, and part Pimlico.
Do.	Strand	Westminster and Brompton		
Do.	Holborn (Duchy part) Strand	Westminster and Brompton		
Do.	Strand	Westminster and Brompton		
Do.	St. Margaret	Westminster and Brompton		
Do.	Holborn	Westminster and Brompton		
N. W. or Dartford Div. of Kent	Blackheath	Greenwich ...	R Division (Woolwich P.C.)	Includes Well Hall, and parts of Lee Green and Shooter's Hill.
Do.	Blackheath	Greenwich ...	R Division (Woolwich P.C.)	Includes parts of Abbey Wood, Bostal Heath and Wood, and Shooter's Hill.
Do.	Blackheath	Greenwich ...	R Division (Woolwich P.C.)	Includes New Beckton.
8	17	14		

Lists, 6th April, 1907. Includes Government property.
Counties, showing the respective County Parliamentary Divisions and the Hundreds.

NOTES TO TABLE AS TO AREA OF SUPPLY OF THE METROPOLITAN WATER BOARD.

(*a*) *The South Essex Waterworks Company.*—Barking Town urban district and Romford urban district are wholly supplied by the South Essex Waterworks Company; and Ilford urban district and Dagenham parish in Romford rural district are partly supplied by that Company. But the whole of Barking Town urban district, Romford urban district and Ilford urban district remain within the Board's statutory area of supply (see Minutes of evidence of the Committee on the Bill of 1902, pp. 496-8), the saving for the South Essex Company contained in s. 36 of the Act of 1902 applying only to Dagenham. Sect. 36 of the Act of 1902 provides that "notwithstanding anything in this Act it shall not be lawful for the Water Board to extend their supply of water, whether in bulk or otherwise, to or within so much of the Romford Rural District as is comprised within the statutory limits of the South Essex Waterworks Company, but this restriction shall apply only if and so long as that Company are able and willing to supply water, proper and sufficient for all reasonable purposes for which it is required by the Romford Rural District Council." Certain parishes in the Romford rural district are within the district of supply of the South Essex Waterworks Company. Only Dagenham parish within such rural district was within the limits of the East London Company. The effect of the section is to prevent the Water Board from extending their supply of water whether in bulk or otherwise, in competition with the South Essex Company in Dagenham so long as that Company are able to satisfy the Romford Rural District Council in the terms of the section. Noak Hill (1594 acres, 55 houses, 259 pop. in 1901) was also apparently in the statutory area of supply of the East London Waterworks Company as part of the ancient parish of Romford, but as Noak Hill parish forms part of the Romford rural district it is now under the conditions of s. 36 of the Act of 1902 above referred to.

(*b*) *Hoddesdon.*—Hoddesdon urban district is partly supplied by the Hoddesdon Waterworks Company. Sect. 14 (2) of the Metropolis Water Act, 1902, provides that in the event of the Hoddesdon Urban District Council becoming entitled to construct waterworks within their district, the provisions of the Act relating to the supply of water in bulk to the councils of rural districts shall apply as if that urban district were a rural district of Hertfordshire. The provisions referred to are contained in s. 13 to the effect that if the Water Board are required to supply water in bulk to the council of any rural district situate wholly or partly within the Board's limits of supply, the district shall cease to be within the limits of the supply, and the waterworks and plant belonging to the Water Board situate in the district in actual use (for the supply of that district *only*) within the preceding six months shall be transferred to the Rural District Council upon terms arrived at by agreement or arbitration.

(*c*) *East Barnet and Finchley.*—Sect. 35 (2) of the Metropolis Water Act, 1902, provides that the provisions of the Act shall not empower the Water Board to supply water (unless with the consent of the Barnet District Gas and Water Company) within any part of the statutory limits of that Company for the supply of water in which a Metropolitan Water Company were not authorised to supply water, *except to such premises as at the appointed day were actually supplied by the New River Company.* The New River Company supplied a few houses situated in East Barnet (in Herts) and in Finchley (in Middlesex), which parishes were outside the New River limits. The sub-section prevents s. 3 of the Act having the effect of extending the powers of the Water Board to the whole of the parishes of East Barnet and Finchley (unless with the consent of the Barnet Company) and restricts the powers of supply of the Board to the houses actually supplied by the New River Company on the appointed day, as shown in the table.

Friern Barnet.—In Friern Barnet there were at the appointed day (and are now) two meter supplies to street watering posts. The provisions of s. 35 (2) of the Act of 1902 apply to this parish, which is within the area of supply of the Barnet District Gas and Water Company.

(*d*) *Sevenoaks Rural District.*—Parts only of Brasted, Chevening and Sundridge were authorised to be supplied by the Kent Act of 1888, s. 5; but upon requisition by the Sevenoaks Rural District Council to supply in the excluded parts (to the south of a defined line) of the parishes of Shoreham, Otford, Chevening, Sundridge, and Brasted (except the detached portion of such parish being south of Hever), the Kent Company were empowered by the same section to lay pipes or construct works for supplying such parts, whereupon the powers of the Rural District Council to supply such part or parts would cease and be annulled. The Sevenoaks Rural District Council subsequently requested the Company to supply the whole of the parish of Shoreham and parts of the parishes of Sundridge and Brasted, as shown in the table. Parts of Otford and Chevening are supplied by the Sevenoaks Rural District Council.

As regards Westerham, part only of Westerham was within the limits of supply defined by the second schedule to the Kent Act of 1888, but supply might be extended to the excluded part of the parish with the consent in writing of the Westerham Waterworks Company (Kent Act, 1888, s. 5). The subsequent purchase of the Westerham Waterworks by the Kent Company placed the whole of the parish in the Kent area, but as the Company did not care to extend their water mains to Crockham Hill in the southern part of the parish they allowed the Limpsfield and Oxted Company to obtain concurrent powers over 3,171 acres south of Westerham town.

(*e*) *Enfield.*—Enfield is partly within the limits of the Barnet District Gas and Water Company. By s. 11 (6) of the Metropolis Water Act, 1902, the Water Board as from the appointed day shall supply water in such parts of the urban district of Enfield as were immediately before that date supplied by the council thereof, the supply being furnished by the Board as if in exercise of their powers as successors of the New River Company, and the Acts and regulations of the Company are applied not only to the parts so supplied, but also to the remaining parts of that district subject however, as regards a portion of the District of Enfield, to the provisions of the Act with respect to the Barnet District Gas and Water Company.

By s. 35 (1) of the Act the Water Board shall not be entitled to supply water within so much of the urban district of Enfield as is comprised within the limits of the Barnet District Gas and Water Company for the supply of water, but this restriction shall apply only if and so long as that Company are able and willing to supply water proper and sufficient for all reasonable purposes for which it is required by the Enfield Urban District Council. The effect of the sub-section is to prevent the Water Board competing with the Barnet District Gas and Water Company in a small corner of Enfield which is within the limits of supply of the latter Company so long as that Company are able and willing to furnish an adequate supply of water.

(f) *Hendon.*—Hendon is partly supplied by the Colne Valley Water Company. Sect. 32 of the Metropolis Water Act, 1902, provides that notwithstanding anything in the Act it shall not be lawful for the Water Board to supply water in that part of the parish of Hendon which under the Colne Valley Water Act, 1873, is within the limits of the supply of the Colne Valley Water Company. The Colne Valley Water Act, 1873, s. 4, defines the limits of supply of that Company to include that part of the parish of Hendon which is west of the Midland Railway, north of Borrough's Lane, and north of the Edgware and Highgate branch of the Great Northern Railway.

(g) *Southall Norwood.*—Sect. 33 of the Metropolis Water Act, 1902, provides that nothing contained in or done under the Act shall prejudice or affect any agreement between the South West Suburban Water Company and any Metropolitan Water Company or any local authority or person made prior to the passing of the Act, for a supply of water within the statutory district of the South West Suburban Water Company, or shall authorise the Water Board to supply water within the limits of the South West Suburban Water Company as defined by s. 4 of the South West Suburban Water Act, 1883, except in pursuance of any such agreement.

The limits of supply of the South West Suburban Water Company are defined by s. 4 of their Act of 1883 as including *inter alia* the precinct or parish of Norwood. The Grand Junction Water Works Company by arrangement with the South West Suburban Water Company supplied parts of Southall Norwood which were not within the limits of supply of the Grand Junction Company, but are within those of the South West Suburban Company. A portion of Southall Norwood supplied by the Grand Junction Division formed part, previously to 1894, of Heston parish mentioned in the Grand Junction Act of 1878, which empowered the Company to raise additional capital for the purpose of extending their supply to that and other parts of Middlesex. By Local Government Board Order No. 31,372, which came into operation on 13th September, 1894, part of the urban district of Heston and Isleworth was transferred to the Southall Norwood urban district.

(h) *Sunbury.*—Sunbury was supplied by the Grand Junction Company outside their statutory area and is expressly included within the Board's limits of supply by the second schedule to the Act of 1902.

(i) *Croydon and Epsom Rural Districts and Carshalton Urban District.*—Chessington, Cheam, Cuddington (part comprising Worcester Park), Ewell and Carshalton were supplied by the Lambeth Company outside their statutory area. Morden was wholly within the Lambeth Company's area. Chessington is expressly included within the limits of supply by the second schedule to the Act of 1902. By s. 3 of the Act, where a Metropolitan Water Company were immediately before the appointed day supplying water otherwise than in bulk in any parish where they were not authorised to supply water, such parish shall be deemed to be an authorised parish; but this extension of limits of supply is restricted by s. 34 of the Act which provides that the provisions of the Act shall not empower the Water Board or any local authority to supply water within the limits of the supply of the Sutton District Water Company as defined by their Act of 1871, except so much thereof as was on the 25th March, 1902, supplied by the Lambeth Waterworks Company. The Sutton District Waterworks Act, 1871, s. 6, defines that Company's limits as comprising *inter alia* Cheam, Carshalton, Morden, Ewell and Cuddington. The effect therefore is to restrict the Water Board's area of supply to the parts of the last five parishes which were actually supplied by the Lambeth Company at 25th March, 1902.

(j) *Tatsfield.*—By s. 15 of the Kent Waterworks Act, 1902, the limits of the Kent Company were extended to so much of the parish of Tatsfield as lies north of Pilgrims Road, including that road. By s. 16 the Kent Company were required to cause pipes to be laid down and water to be brought to places within the extended limits if so required by a specified proportion of the inhabitants or occupiers. The Company, however, were not bound to supply water within the extended limits at any higher level than could be reached by gravitation of the reservoir at Betsom's Hill on the Westerham Hill Park Estate (s. 17). By s. 18 of the same Act the Kent Company were authorised to acquire the works, plant and pipes constructed and laid by the owners of the Westerham Hill Park Estate (which was partly in Westerham parish in the Company's limits of supply, and partly within the adjoining parish of Tatsfield) for supplying that estate with water, together with the lands on or under which the same had been so constructed or laid down.

Tatsfield is in the Godstone Rural District, and is partly supplied by the Limpsfield and Oxted Water Company. The whole of Tatsfield is within the statutory limits of the Limpsfield and Oxted Water Company.

(k) *City of London.*—In 1571 an Act was passed (13 Eliz., c. 18) for the bringing of the river of Lee to the north side of the City of London, followed by Acts of 1605 and 1606 for the bringing in of a fresh stream of running water to the north parts of the City of London (3 Jas. 1, c. 18; 4 Jas. 1, c. 12). The New River Company was incorporated by Letters Patent, dated 21st June, 1619 (17 Jas. 1.).

(l) *Finsbury.*—The Charterhouse and Furnival's Inn are not expressly mentioned in any of the New River Charters or Acts. They were probably included under the description "City of London and Suburbs."

(m) *Greenwich.*—Though wholly surrounded by parishes authorised to be supplied by the Kent Company, Kidbrooke is not mentioned in any of the Kent Acts.

(n) *Stepney.*—Though Old Artillery Ground and Norton Folgate were wholly supplied by the East London Company, these places are not mentioned in any of the East London Company's Acts; probably they came under the words in the Act of 1807, "places adjacent." In 1691 the Shadwell Waterworks were authorised by Act 3 & 4 W. and M. c. 37, and in 1748 the West Ham Waterworks under 21 Geo. 2, c. 8, which were both subsequently purchased by the London Dock Company under 47 Geo. 3, sess. 2, c. 5, and from that Company by the East Londo Company in 1808 under 47 Geo. 3, c. 8.

ORDER IN COUNCIL CONFIRMING THE METROPOLITAN WATER STOCK REGULATIONS, 1903.

At the Court at Buckingham Palace, the 11th day of August, 1903.

PRESENT: The King's Most Excellent Majesty in Council.

Whereas the Local Government Board have, in virtue of the power conferred upon them by the Metropolis Water Act, 1902, made certain Regulations with respect to the creation, issue, transfer, dealing with, and redemption of Metropolitan Water Stock which the Metropolitan Water Board create under that Act:

And whereas the said Regulations have, as required by the Public Health Acts Amendment Act, 1890, as applied by the Metropolis Water Act, 1902, been laid before both Houses of Parliament for the period of thirty days, and no resolution has been passed by either House that such regulations ought not to be proceeded with:

Now, therefore, His Majesty, having taken the said Regulations (copy whereof is hereunto annexed) into consideration, is pleased, by and with the advice of His Privy Council, to confirm, and doth hereby confirm, the said Regulations.

A. W. FITZROY.

REGULATIONS REFERRED TO IN THE FOREGOING ORDER IN COUNCIL.

Whereas by the Metropolis Water Act, 1902 (hereinafter referred to as "the Act"), it is enacted that a Board, to be called the Metropolitan Water Board (hereinafter referred to as the "Water Board"), shall be established for the purpose of acquiring by purchase and of managing and carrying on the undertakings of the companies mentioned in the First Schedule to the Act (which companies in the Act and hereinafter are referred to as "the Metropolitan Water Companies"), and generally for the purpose of supplying water within the area described in the Second Schedule to the Act, subject to such alterations therein as may be made by or under the Act;

And whereas the Act confers upon the Water Board certain borrowing powers, establishes a Water Fund, and provides for the discharge of certain sums by means of Metropolitan Water Stock and for other purposes in respect of which that Stock may or shall be issued;

And whereas by Sections 17 and 18 of the Act it is enacted as follows; that is to say,—

"**17**.—[See this section, *ante*, p. 611.]

"**18**.—[See this section, *ante*, p. 612.]

. . . .

And whereas Section 52 of the Public Health Acts Amendment Act, 1890, is in the following terms; that is to say,—

. . . .

[See this section, *ante*, p. 612.]

Now, therefore We, the Local Government Board, in pursuance of the powers given to Us in that behalf, do hereby make the following Regulations (herein-after referred to as "the Regulations"), and do hereby Order and Prescribe that the Regulations shall, from and after the confirmation thereof apply to the creation, issue, transfer, dealing with, and redemption of any Metropolitan Water Stock which the Water Board create under the Act in the exercise of any statutory borrowing power as defined in the Regulations:—

PRELIMINARY.

ARTICLE 1.—In the Regulations the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely,—

The expression "the Water Board" means the Metropolitan Water Board;

The expression "the Clerk" means the Clerk of the Water Board;

The expression "Stock" means Metropolitan Water Stock created by the Water Board under the Act and the Regulations;

The expression "the Water Fund" means the Water Fund established in pursuance of the Act;

The expression "the Board" means the Local Government Board;

The expression "the Bank of England" means the Governor and Company of the Bank of England;

The expression "Statutory borrowing power" means any power of the Water Board under the Act (other than the power conferred by Section 44 of the Act), or under the Regulations, or under any Consent of the Board in pursuance of the Act or of the Regulations, whether the power be or be not coupled with a duty,—

(*a*) Of borrowing money; or

(*b*) Of re-borrowing money for paying off any money borrowed or for redeeming any stock created and issued or any other security granted by the Water Board; or

(*c*) Of redeeming any stock created and issued by the Water Board; or

(*d*) Of creating and issuing any stock to be issued to a Metropolitan Water Company or to any person to whom the Water Board may be required to issue stock; or

(*e*) Of substituting stock for any debenture, debenture stock, or mortgage debt, the liability for which is transferred by the Act to the Water Board, or for any stock created and issued or for any other security granted by the Water Board.

The expression "statutory security" means any security in which trustees are by law for the time being authorised to invest, and any mortgage bond, debenture, debenture stock, stock, or other security (not being annuities, rentcharges, or securities payable to bearer) duly issued by any Local Authority as defined by Section 34 of the Local Loans Act 1875, but exclusive in every case of any security of the Water Board;

The expression "prescribed period" means, in relation to an amount of stock created and issued for the purpose of exercising a statutory borrowing power, the period within which, in pursuance of any enactment applicable to the case, or of any Consent of the Board under the Act or the Regulations, or of any Scheme of Consolidation under the Regulations, provision is required to be made for the repayment of moneys borrowed, or for the redemption of stock issued, in the exercise of the statutory borrowing power.

Article 2.

CREATION OF STOCK.

ARTICLE 2.—(1.) The Water Board, in pursuance of their powers under Section 17 of the Act, and of any statutory borrowing power exercisable by the creation and issue of stock, shall by resolution create two classes of stock; that is to say,—

(i.) Stock to be designated Metropolitan Water (A) Stock and to be issued to holders of irredeemable debenture stock of any Metropolitan Water Company in substitution for that irredeemable stock, or, with the Consent of the Board signified by Order, to be issued for the purpose of exercising any other statutory borrowing power;

(ii.) Stock to be designated "Metropolitan Water (B) Stock" and to be issued for the purpose of exercising any statutory borrowing power exercisable otherwise than by the issue of Metropolitan Water (A) Stock.

(2.) The Water Board, with the Consent of the Board signified by Order, may, by resolution, from time to time create and may thereafter issue stock of any other class than Metropolitan Water (A) Stock or Metropolitan Water (B) Stock. The stock so created and issued shall have such designation as the Water Board, in their resolution for the creation of the stock, determine and the Board approve.

(3.)—(i.) Every resolution for the creation of stock shall specify the particular borrowing power for the purpose of which the stock is created, and, where the stock is created in the exercise of more than one borrowing power, the amount of money to be raised by the stock in respect of each borowing power.

(ii.) A copy of every such resolution shall be forwarded to the Board as soon as conveniently may be after the passing of the resolution.

(4.)—(i.) Metropolitan Water (A) Stock shall be redeemable at par at the option of the Water Board after the expiration of a period of sixty years from the Thirty-first day of March, One thousand nine hundred and three.

(ii.) Metropolitan Water (B) Stock shall be redeemable at par at the option of the Water Board after the expiration of a period of thirty years from the date of the first creation of stock of that class.

(iii.) Stock of a class other than Metropolitan Water (A) Stock or Metropolitan (B) Stock shall be redeemable at par at the option of the Water Board after the expiration of such period from the date of the first creation of stock of that class as the Water Board determine and the Board approve. The period so determined and approved shall be specified in each resolution for the creation of stock of the class to which the resolution relates.

(5.) Each class of stock shall be created on such terms and subject to such conditions that all stock at any time belonging to that class shall bear one and the same rate of dividend, shall be transferable in the same manner, shall become redeemable at the same time, and shall in all other respects be of the same character.

(6.) Subject to the provisions of the Act and of the Regulations, and to any consent of the Board in pursuance of the said provisions, all stock shall be transferable in such manner as the Board, by Order, direct or approve, and may be issued for such an amount (being within the statutory borrowing power applicable to the case) at such price, and to bear such half-yearly or other dividends, as the Water Board, by the resolution for the creation of the stock direct.

Article 3.

ARTICLE 3.—The Water Board in the exercise of a statutory borrowing power may create and issue stock for the purpose of defraying the expenses of the creation and issue of any stock; and shall provide for the redemption of any stock created and issued in pursuance of this Article within the period for the redemption of the stock in respect of which the said expenses are incurred.

ARTICLE 4.—Subject to the provisions of the Act, all stock from time to time created by the Water Board in pursuance of the Regulations shall rank equally without any priority or preference by reason of any precedence in the date of any statutory borrowing power, or in the date of creation of any class of stock or of any portion of stock, or in the date of issue of any portion of stock, or on any other ground whatsoever, and shall also rank equally with all other securities of the Water Board created or granted in pursuance of any statutory borrowing power or in pursuance of any Act to be hereafter passed, and all dividends payable on any such stock shall rank equally with interest on all other securities of the Water Board created or granted in pursuance of any statutory borrowing power or in pursuance of any Act to be hereafter passed.

ARTICLE 5.—(1.) When the Water Board in the exercise of a statutory borrowing power create stock for the purpose of borrowing money, of re-borrowing money, or of redeeming stock the Water Board may create stock of such total amount and may from time to time issue such nominal amounts of stock within the limits of the total amount so created as will, according to the price actually realised in respect of each issue, produce the actual amount, or some portion of the actual amount, of money which, in the exercise of the statutory borrowing power, the Water Board may borrow or re-borrow or may require for redeeming any stock.

(2.) When the Water Board in the exercise of a statutory borrowing power create stock for the purpose of issuing stock to a Metropolitan Water Company, or to any person to whom the Water Board may be required to issue stock, or for the purpose of substituting stock for any debenture, debenture stock, mortgage debt, stock, or other security, the amount of stock to be so created and to be thereafter issued shall be such amount as, in pursuance of the Act or of the Regulations, the Water Board are required or authorised to issue or substitute as aforesaid.

CONSOLIDATION OF LOANS.

ARTICLE 6.—(1.) For the purpose of the repayment of all or any loans which have been lawfully raised by the Water Board by the creation and issue of stock, and the periods for the repayment of which have been fixed by the Board, the Board, having due regard to the amounts of the several loans and the periods allowed for their discharge, may approve a scheme for the consolidation of the said loans.

(2.) Any such scheme as aforesaid may fix the period or periods within which the loans so consolidated shall be discharged, and for that purpose may extend or vary any period allowed for the discharge of the loans, and may also apply and have effect with respect to any loans theretofore included in a scheme of consolidation in pursuance of this Article.

(3.) Any scheme of consolidation approved by the Board as aforesaid may be varied by a subsequent scheme in pursuance of this Article.

Article 7.

DIVIDENDS FUND.

ARTICLE 7.—(1.) For the payment of dividends on the several classes of stock there shall in each year be carried to accounts of the Water Fund, entitled the Stock (Dividends) Fund Accounts, a sum or sums equal to the aggregate amount of all dividends payable during the year.

(2.) There shall be a separate Stock (Dividends) Fund Account, distinguished by a number or otherwise, for each class of stock, and each such account is herein-after referred to as the Dividends Fund Account.

(3.) The Water Board shall, from time to time, pay the dividends on stock and charge the same to the appropriate Dividends Fund Account.

REDEMPTION OF STOCK.

ARTICLE 8.—(1.) Subject to the provisions of the Act as regards stock for the discharge of which provision is required by the Act to be made within a period of one hundred years from the Thirty-first day of March, One thousand nine hundred and three, there shall in each year, for redemption and extinction, or purchase and extinction, of the several classes of stock, be carried to accounts of the Water Fund, entitled the Stock (Redemption) Fund Accounts, a sum or sums equal to the aggregate amount of all sums payable in the year for redemption and extinction, or purchase and extinction, of stock.

(2.) There shall be a separate Stock (Redemption) Fund Account, distinguished by a number or otherwise, for each class of stock, and each such account is herein-after referred to as the Redemption Fund Account.

(3.) Subject to the provisions of the Act and of the Regulations the sums to be carried to the Redemption Fund Account in each year in respect of any stock shall be determined by reference to the provisions either of paragraph (*a*) or paragraph (*b*) of this subdivision, according as the Water Board, with the consent of the Board, decide; that is to say,—

Either—

(*a*) The Water Board shall carry to the Redemption Fund Account throughout the prescribed period such equal annual sums as will, without accumulations, at the end of that period together make up a sum equal to the nominal amount of the stock in respect of which the said sums are carried to the account; or

(*b*) The Water Board shall carry to the Redemption Fund Account, throughout the prescribed period,—

(i.) Such equal annual sums as, being accumulated at compound interest at a rate not exceeding three pounds per centum per annum, or at such lesser rate as the Board from time to time determine, would, after payment of all expenses, make up a sum equal to the nominal amount of the stock in respect of which the said sums are carried to the account; and

(ii.) Accumulations of the said equal annual sums at compound interest at the rate per centum on which the said equal annual sums are respectively calculated.

ARTICLE 9.—(1.) In relation to stock for the discharge of which provision is required by the Act to be made within a period of one hundred years from the Thirty-first day of March, One thousand nine hundred and three, there shall, during the first twenty years of that period, be carried to the Redemption Fund Accounts in respect of that stock, in substitution for any sums required by Article 8 to be carried to the Redemption Fund Accounts during that period, such sums as, in pursuance of the proviso to Section 18 (1) of the Act, are required to be paid towards the discharge of the said stock, together with the accumulations of the said sums as required by Article 11, and any sums so required to be paid, and the accumulations thereof, shall be carried to such Redemption Fund Account as the Board from time to time determine.

(2.) If it appears to the Board at any time that the amount standing to the credit of the Redemption Fund Account in respect of any stock, with the future annual sums to be carried to the account under the Regulations, will probably not be sufficient within the prescribed period to make up a sum equal to the nominal amount of the stock, the sums to be carried to the account shall be increased annually or otherwise to such extent as the Board direct.

(3.) If it appears to the Board at any time that the amount standing to the credit of the Redemption Fund Account in respect of any stock, with the future annual sums to be carried to the account under the Regulations, will probably be more than sufficient within the prescribed period to make up a sum equal to the nominal amount of the stock the sums to be carried to the account may be reduced either temporarily or permanently to such extent as the Board may allow.

(4.) If at any time the total amount carried to the credit of the Redemption Fund Account in respect of any stock is such that, in the opinion of the Board, it will probably be sufficient with the accumulations thereof (if accumulations are required) within the prescribed period to make up the nominal amount of the stock, the Water Board may, with the consent of the Board, cease to carry any sums to the account in respect of that stock until the Board otherwise direct.

ARTICLE 10.—(1.) In any case where moneys which have been carried to the Redemption Fund Account are applied in the redemption or purchase and extinction of stock at a rate exceeding One Hundred Pounds sterling for One Hundred Pounds stock, the Water Board shall carry to the Redemption Fund Account, during the year in which the redemption is effected or the purchase is made, an additional sum or sums equal in amount to the sum or sums paid in excess of the said rate for the redemption or purchase of stock in that year.

(2.) When the Water Board redeem or purchase and extinguish stock by the application of moneys which have been carried to the Redemption Fund Account, the stock so redeemed or purchased and extinguished shall be deemed to be stock issued in respect of such one or more of the statutory borrowing powers exercised by the creation and issue of stock and, if in respect of more than one, in such proportions as the Water Board determine: Provided that no larger amount of stock shall be deemed to be redeemed or purchased and extinguished in respect of any statutory borrowing power than the amount which, according to the actual price of redemption or purchase, could be redeemed or purchased with the moneys carried to the Redemption Fund Account in respect of that borrowing power.

ARTICLE 11.—(1.) In relation to stock for the discharge of which provision is required by the Act to be made within a period of one hundred years from the Thirty-first day of March, One thousand nine hundred and three, the Water Board, during the first twenty years of that period, shall from time to time invest in statutory securities such sums as, in pursuance of the proviso to Section 18 (1) of the Act, and of Article 9, are required to

Article 11. be paid towards the discharge of the said stock, and the interest and annual proceeds arising from those securities shall be invested and accumulated in like manner.

(2.) The Water Board may from time to time apply the sums standing to the credit of the Redemption Fund Account, other than sums and the accumulations of sums mentioned in sub-division (1) of this Article, in redeeming stock according to the terms of issue and purchasing stock for extinction, but the annual sums to be carried to the Redemption Fund Account shall not be affected by the said application, and, pending or in default of any such application of the said sums or of their application in the manner authorised by sub-division (3) of this Article, the Water Board shall invest the said sums in statutory securities, and the interest or annual proceeds arising from every such investment shall be carried to the general revenue Account of the Water Fund or to the Dividends Fund Account, as the Water Board think fit.

(3.) Notwithstanding anything in sub-division (2) of this Article—

(*a*) Where the Water Board have any statutory borrowing power exercisable for the purpose of raising money by the creation and issue of stock, the Water Board, instead of exercising the statutory borrowing power by the creation and issue of additional stock, may, subject as is herein-after provided, exercise the statutory borrowing power, either wholly or partially, by using for the purpose any moneys, other than moneys to which sub-division (1) of this article applies, for the time being standing to the credit of the Redemption Fund Account and of any separate account forming part of the Redemption Fund Account.

(*b*) Where the Water Board determine to proceed in the manner authorised by paragraph (*a*) of this sub-division the Water Board shall pass a resolution to that effect; and shall, by the resolution, prescribe all such matters or things as in or in pursuance of this sub-division are referred to as prescribed or are required to be prescribed; and, after passing the resolution, the Water Board shall—

(i.) withdraw from the moneys standing to the credit of the Redemption Fund Account the prescribed sum which shall be equal to the amount of the statutory borrowing power proposed to be exercised, and such sum shall be deemed to be withdrawn from such separate account or separate accounts of the Redemption Fund Account as shall be prescribed; and

(ii.) deduct, from the amount of stock for the time being chargeable to the purpose or attributable to the exercise of the borrowing power to which a separate account prescribed as aforesaid has reference, a portion of stock at par value equal to the sum withdrawn from that separate account, and transfer that portion of stock, as from the prescribed date, to the separate account in respect of which the statutory borrowing power is exercised under this clause.

(4.) The Regulations shall apply—

(*a*) to the moneys withdrawn from the Redemption Fund Account and used in pursuance of sub-division (3) of this Article as though the moneys so withdrawn had been applied in the redemption of stock at par on the separate account or separate accounts from which the moneys were withdrawn, and as though the moneys so used had been raised by the issue of additional stock for the purposes of the separate account in respect of which the statutory borrowing power is exercised under sub-division (3) of this Article; and

(*b*) to the stock deducted and transferred in pursuance of sub-division (3) of this Article as though the stock so deducted had, in pursuance of the Regulations, been redeemed by the application of moneys carried to the Redemption Fund Account on the separate account or separate accounts from which the stock was deducted, but subject to the condition that the stock shall not be cancelled, and as though the stock so transferred were additional stock expressly issued for the purposes of the separate account in respect of which the statutory borrowing power is exercised under sub-division (3) of this Article.

(5.) As regards stock for the discharge of which provision is required by the Act to be made within a period of one hundred years from the Thirty-first day of March, One thousand nine hundred and three, the Water Board shall in each year, after the first twenty years of that period, apply, for the purpose of providing or making up any sum which in pursuance of Article 8 will be required to be carried to the Redemption Fund Account, so much of the moneys invested and accumulated in compliance with sub-division (1) of this Article as will result from the division of the total sum representing the moneys then remaining invested and accumulated by the number of years unexpired of the period of one hundred years hereinbefore mentioned.

ARTICLE 12.—The Water Board on redeeming or purchasing any stock shall forthwith pass a resolution directing the stock so redeemed or purchased to be cancelled by the registrar, and on such cancellation the same and all dividends thereon which have not already become payable shall be and the same are by virtue of the Regulations extinguished.

ARTICLE 13.—(1.) When the Water Board, in the exercise of a statutory borrowing power, create and issue stock for the re-borrowing of money, for the purpose of redeeming stock or any other security or of substituting stock for any security transferred to or granted by the Water Board, or for stock created and issued by the Water Board (including in each case the amount of any compensation payable in respect of the transaction) the Water Board shall forthwith transfer to the Redemption Fund Account the whole or a proportinate part (as the case may require) of any money and securities forming part of any sinking fund applicable to the discharge of the security, and also such further sum, if any, as may be necessary to make the money and securities so paid and transferred equivalent to the amount which should have been in that sinking fund, or should have been paid off, in respect of the security for the redemption of which or in substitution for which the stock is created and issued; and where the security consists of stock, the Water Board shall cause all money standing to the credit of any Redemption Fund Account in respect of that stock to stand in the proper Redemption Fund Account to the credit of the separate account in respect of the stock newly created and issued.

(2.) Where the holder of the security is one of the persons described in Section 7 of the Lands Clauses Consolidation Act, 1845, and by that Act enabled to sell land thereunder, and is not expressly or impliedly authorised by any provisions of the Act which relate to the powers of any such holder or of any trustee, he may consent to payment or redemption of the security, and may accept money for giving that consent as if he were the absolute owner of that security, and he is hereby indemnified for giving such consent, and his receipt shall be a good discharge.

(3.) Money received by the holder of any security as authorised by subdivision (2) of this Article, and stock issued to him in redemption of or in substitution for any security, and the dividends on any such stock, shall be subject to the same trusts, rights, powers, testamentary, and other dispositions, provisions, charges, liabilities, and process as affected or applied or had effect with respect to the money secured or represented by the security and any interest or dividend thereon immediately before the redemption or substitution as aforesaid, and every deed, and every other instrument or document, and every testamentary or other disposition, and every other matter or thing hereinbefore mentioned shall have effect with reference to the whole, or a proportionate part of the money or stock received, or of any dividend on the said stock, as the case may be.

APPLICATION OF MONEY RAISED.

ARTICLE 14.—Money raised by stock shall be applied for purposes for which money raisable under the statutory borrowing power, in exercise whereof the stock is issued, ought by law to be applied, and not otherwise:

Provided that if, after the raising of any money by stock under the Regulations, it is found that any part of that money is not required for the purposes to which it is applicable as aforesaid, the Water Board shall carry the money to the Redemption Fund Account and to the proper separate account forming part of the Redemption Fund Account.

ARTICLE 15.—The Water Board may, and if required by the Local Government Board shall, from time to time invest temporarily on statutory securities any sum raised by stock and not for the time being required for the purpose for which it was raised.

REGISTRATION AND CERTIFICATES.

ARTICLE 16.—(1.) The Water Board shall, on such terms and subject to such conditions and instructions* not inconsistent with the Regulations as they think expedient, appoint and keep appointed an officer of the Water Board, or any other person, or the Bank of England, or any other bank, or any banking or other Company, as registrar (herein-after referred to as "the registrar") for all or any of the purposes of the Regulations.

* *Sic.*

Where the Bank of England are the registrar, the Water Board and the registrar may agree to dispense with the need of compliance with any provision of the Regulations which renders the approval of the Water Board a condition precedent to any requirement of the Registrar, and the Regulations shall apply and have effect subject to any such agreement.

(2.) The Water Board in relation to the Regulations and the registrar, except where the Bank of England are the registrar, shall respectively be deemed a banker within the Bankers' Books Evidence Act, 1879.

ARTICLE 17.—(1.) The registrar shall, in relation to each class of stock, keep books (herein-after referred to as "the stock register") in which shall be entered the names and addresses of holders from time to time of stock of that class and the amounts held by them.

(2.) The stock register shall be *primâ facie* evidence of any matter entered therein in accordance with the Regulations, and of the title of the persons entered therein as holders of stock.

Article 18.

ARTICLE 18.—(1.) On demand of a holder of stock the Water Board may, if they think fit, give to him a certificate (herein-after referred to as a "stock certificate") of the proprietorship thereof, specifying the amount of stock to which he is entitled.

(2.) A stock certificate shall be *primâ facie* evidence of the title of the person therein named, his executors, administrators, successors, or assigns, to the stock therein specified; but the want of a stock certificate, if the want be accounted for to the satisfaction of the Water Board, shall not prevent the holder of stock from disposing of and transferring the stock.

(3.) If a stock certificate is worn out or damaged the Water Board, on production thereof, may cancel it and give a similar stock certificate to the person in whom the property in the stock certificate and in the stock therein specified is then vested.

(4.) If a stock certificate is lost or destroyed the Water Board, on proof thereof to their satisfaction, may give a similar stock certificate to the person entitled to the certificate lost or destroyed.

(5.) An entry of the issue of a stock certificate or of a substituted stock certificate, as the case may be, shall be made in the stock register.

TRANSFER.

ARTICLE 19.—Subject to the provisions of the Regulations, and to any direction or approval of the Board in pursuance of the Regulations, every stockholder may transfer all or any part of his stock in books or by deed.

ARTICLE 20.—(1.) If and where the direction or approval of the Board makes any portion of stock transferable in books and not by deed, the provisions of this Article shall apply and have effect, but not otherwise.

(2.) The registrar shall keep books (herein-after referred to as "the stock transfer books"), wherein transfers of stock so transferable shall be entered.

(3.) Every such entry shall be conceived in proper words for the purpose of transfer, and shall be signed by the person making the transfer, or, if he is absent, by his agent thereunto lawfully authorised in writing under his hand attested by a witness.

(4.) Where the Bank of England are the registrar they may, if they think fit, require that the agent be so authorised by power of attorney under the hand and seal of the person making the transfer, attested by two or more credible witnesses.

(5.) The person to whom a transfer is made may, if he thinks fit, underwrite his acceptance thereof.

(6.) Except as otherwise provided by Act of Parliament, and subject to the provisions of the Regulations respecting any portion of stock which the direction or approval of the Board makes transferable by deed and not in books, no mode of transferring stock other than that prescribed in this Article shall be good in law.

ARTICLE 21.—(1.) If and where the direction or approval of the Board makes any portion of stock transferable by deed and not in books, the provisions of this Article shall apply and have effect, but not otherwise.

(2.) Every transfer of stock so transferable shall be by deed.

(3.) The deed of transfer shall relate only to the transfer, and shall not contain any recital, trust, power, or proviso whatsoever.

(4.) The deed of transfer, when duly executed, shall be delivered to and kept by the registrar, and the registrar shall enter a memorial thereof in a book to be called the register of transfers of stock, and shall endorse on the deed of transfer a notice of that entry.

(5.) The registrar shall, after reasonable notice, and on delivery up of the old stock certificate, or on such proof that it cannot be produced, as the registrar, with the approval of the Water Board, may require, deliver to the purchaser a new stock certificate.

(6.) Until the deed of transfer has been so delivered to the registrar, the Water Board or the registrar shall not be affected thereby, and the purchaser of the stock shall not be entitled to receive any dividend thereon.

ARTICLE 22.—(1.) The registrar, before allowing any transfer of stock may, if the circumstances of the case appear to him to make it expedient, require evidence of the title of any person claiming a right to make the transfer.

(2.) That evidence shall be a statutory declaration of one or more competent persons, or of such other nature as the registrar, with the approval of the Water Board, may require.

ARTICLE 23.—(1.) The registrar, with the approval of the Water Board, may, as regards any portion of stock, close the stock transfer books or the register of transfers of stock (as the case may be) on any day in the month next before that in which dividends on that portion of stock are payable, but so that the books be not at any time kept closed for more than fifteen days.

(2.) The persons who on the day of closing in accordance with sub-division (1) of this Article are inscribed as stockholders shall, as between them and their transferees of stock, be entitled to the dividend next payable thereon

ARTICLE 24.—Unless the Water Board have compounded for stamp duty, every deed of transfer of stock transferable by deed shall be duly stamped. and the consideration shall be truly stated therein.

TRANSMISSION.

ARTICLE 25.—(1.) The interest of a deceased stockholder in stock shall be transferable by his executors or administrators, notwithstanding any specific bequest thereof.

(2.) Where two or more persons are registered as owners of any stock, those persons shall be deemed to be joint owners with right of survivorship between them.

(3.) The Water Board or the registrar shall not be required to allow any executors or administrators to transfer any stock until the probate of the will or the letters of administration to the estate of the deceased has or have been left with the registrar for registration, and may require all the executors who have proved the will to join in the transfer.

ARTICE 26.—(1.) If the interest in any stock has become transmitted by any lawful means other than a transfer in books or by deed, or than the death of a stockholder, satisfactory evidence of the transmission shall be furnished to the registrar by a statutory declaration of one or more competent persons, or in such other manner as the registrar, with the approval of the Water Board, may require.

(2.) The name of the person entitled under the transmission shall be entered in the stock register.

(3.) Until evidence has been furnished in accordance with sub-division (1) of this Article, the Water Board or the registrar shall not be affected by the transmission, and no person claiming by virtue thereof shall be entitled to receive any dividend on the stock.

(4.) In this Article the expression "transmission" includes any case of apparent transmission in consequence of the change of name of the stockholder, although the actual ownership of the stock may remain unaltered.

DIVIDENDS.

ARTICLE 27.—The Water Board shall pay by the registrar the dividends on stock.

ARTICLE 28.—The Water Board or the registrar shall not be required to pay any executors or administrators any dividend on stock held by their testator or intestate until the probate of the will or the letters of administration has or have been left with the registrar for registration.

ARTICLE 29.—The registrar before paying any dividend on any stock may, if the circumstances of the case appear to him to make it expedient, require evidence of the title of any person claiming a right to receive the dividend, and that evidence shall be a statutory declaration of competent persons, or of such other nature as the registrar, with the approval of the Water Board, may require.

ARTICLE 30.—(1.) Where more persons than one are registered as joint holders of any stock, any one of them may give an effectual receipt for any dividend thereon, unless notice to the contrary has been given to the registrar by any other of them.

(2.) Where stock is standing in the name of an infant or person of unsound mind jointly with any person not under legal disability, a letter of request for receipt of the dividends on the stock shall be sufficient authority in that behalf if given under the hand of the person not under disability, but the registrar before acting on the letter of request may, if he think fit, require proof to his satisfaction of the alleged infancy or unsoundness of mind by a statutory declaration of one or more competent persons, or by such other means as the registrar may specify.

ARTICLE 31.—(1.) Where a stockholder desires to have his dividends sent to him by post, he may make a request for that purpose to the registrar in writing, signed by him in a form approved by the Water Board, and shall give to the registrar an address in the United Kingdom, or in the Channel Islands, or the Isle of Man, to which the letter containing the warrants are from time to time to be sent.

(2.) The posting by the registrar of a letter containing a dividend warrant addressed to a stockholder at his request at the address so given by him shall, as respects the liability of the Water Board and of the registrar, be equivalent to the delivery of the warrant to the stockholder himself.

(3.) Every warrant so sent by post shall be deemed a cheque, and the Water Board and the registrar shall, in relation thereto, be deemed a banker within the Bills of Exchange Act, 1882.

(4.) Provided that this Article shall not apply to cases to which the provisions of Section 4 of the National Debt Act, 1889, apply.

Article 32.

STOCK CERTIFICATES WITH COUPONS TO BEARER.

ARTICLE 32.—(1.) On demand of a stockholder and on delivery to the registrar of the stock certificate (if any), the registrar may issue to the stockholder a stock certificate to bearer, that is to say, a certificate of title to his stock or any part thereof, entitling the bearer to the stock therein specified, and transferable by delivery with coupons entitling the bearer of the coupons to the dividends on the stock.

(2.) A stock certificate to bearer shall not be issued in respect of any sum or stock other than Ten Pounds or a multiple of Ten Pounds.

(3.) No trustee shall apply for, purchase, take, or hold a stock certificate to bearer unless he is in express words authorised to do so by the instrument creating his trust, and any contravention of this provision by a trustee shall be deemed a breach of trust; but this provision shall not impose on the Water Board or the registrar an obligation to inquire or to take notice whether a person applying for or holding a stock certificate to bearer is or is not a trustee or subject the Water Board or the registrar to any liability in case of his, with or without notice, issuing to a trustee a stock certificate to bearer, or invalidate any stock certificate to bearer issued.

(4.) Where a stock certificate to bearer is outstanding the stock represented thereby shall cease to be transferable in books or by deed.

(5.) The bearer of a stock certificate to bearer may, on delivery up to the registrar of the certificate, and of all unpaid coupons belonging thereto, require to be entered in the stock register as the holder of the stock described in the certificate under which he derives title, and thereupon such stock certificate and coupons shall be cancelled and the stock shall be re-entered in the register as transferable, and shall become and again be transferable in the stock transfer books or by deed, as the case may require, and shall, as regards the mode of payment of the dividends thereon, be in the like condition as if no stock certificate to bearer had been issued in respect thereof.

(6.) The coupons issued with a stock certificate to bearer shall comprise the dividends to be paid in respect of the stock therein specified for such period as the Water Board approve.

(7.) At the end of that period fresh coupons may be issued for such further period as the Water Board approve, and so for successive periods during the continuance in force of the stock certificate, but the Water Board may direct the registrar, instead of issuing fresh coupons in respect of any stock certificate, to give in exchange a fresh stock certificate with coupons.

(8.) Payment to the bearer of a coupon of the amount expressed therein shall be a full discharge to the Water Board and to the registrar from all liability in respect of that coupon and the dividend represented thereby.

(9.) Where the Bank of England are the registrar coupons shall be payable at the chief establishment of the Bank at the expiration of three clear days from the days of presentation, and at any branch establishment of the Bank situate more than ten miles from the chief establishment at the expiration of five clear days from the day of presentation.

(10.) If a stock certificate to bearer or coupon is worn out or damaged, the registrar, on production and delivery up thereof, may cancel it and issue a new certificate or coupon.

(11.) If a stock certificate to bearer or coupon is lost or destroyed, the registrar may issue a new certificate or coupon on receiving indemnity to

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the satisfaction of the Water Board against the claims of all persons deriving title under the certificate or coupon lost or destroyed.

(12.) All coupons issued under the Regulations in respect of any stock certificate to bearer shall, for the purposes of the Acts relating to stamp duties, be deemed to have been attached to and issued with that stock certificate.

(13.) Stock specified in a stock certificate to bearer shall be charged on the same securities, and be subject to the same powers of redemption and other powers, and save as regards the mode of transfer and of payment of dividends thereon, and save so far as a stock certificate to bearer is a negotiable instrument, shall be subject to the same incidents in all respects as if that stock had continued to be registered in the stock register as transferable in books or by deed.

GENERAL.

ARTICLE 33.—(1.) Stock is personal property.

(2.) Stock is not liable to foreign attachment by the custom of London or otherwise.

(3.) No notice of any trust, express, implied, or constructive, in respect of any stock, or of any stock certificate to bearer or coupon, shall be entered in the stock register, or in any other book kept by the Water Board or the registrar, or be receivable by the Water Board or the registrar, or affect the registrar or the Water Board through the registrar or otherwise.

ARTICLE 34.—(1.) If at any time any dividend due on any stock remain unpaid for two months after demand in writing the person entitled thereto may apply to the High Court for a receiver, and the Court may, if it thinks fit, appoint a receiver on such terms as it thinks fit.

(2.) The receiver shall have the like power as the Water Board would have, for the purpose of raising any sum required to meet a deficiency in the Water Fund, so far as it may be necessary to meet that deficiency in order to provide the moneys which ought to be carried under the Regulations to the Redemption Fund Account or the Dividends Fund Account.

(3.) The receiver shall also have such other powers and such duties as the Court thinks fit, and shall apply all moneys raised by him after payment of expenses and costs as the Court directs, for purposes of the Regulations.

(4.) The Court may at any time discharge the receiver, and shall have full jurisdiction over him and all persons interested in his acts.

ARTICLE 35.—A person taking or holding stock shall not be concerned to inquire or to take notice whether the creation or issue thereof was or was not within any statutory borrowing power of the Water Board, or otherwise in accordance with the Regulations, or whether or not the Water Board or any meeting thereof was properly constituted or convened, or whether or not the proceedings at any meeting of the Water Board were legal or regular, or to see to the application of any money raised by stock, or be answerable for any loss or misapplication thereof.

ARTICLE 36.—(1.) Once in every year, at a time appointed by the Board, the Clerk to the Water Board shall send to the Board an abstract of the accounts of the Water Board relating to stock and the Redemption Fund Account and subordinate accounts in a form prescribed by the Board.

The abstract shall be verified by a statutory declaration of an officer of the Water Board, if and as may be required by the Board, and shall be made up to such date in each year as the Board determine.

(2.) In case of wilful default by the Clerk or any other officer of the Water Board in respect of any matter mentioned in sub-division (1) of this Article or in respect of any requirement of the Board in relation to any such matter, the said Clerk or other officer shall on each occasion be liable to a fine not exceeding Twenty Pounds, and every fine under this sub-division shall be recoverable summarily on the prosecution of the Board and not otherwise.

(3.) If by any such abstract or otherwise it appears to the Board that the Water Board have failed to comply with any requisition of the Regulations, or of any Order of the Board thereunder, in relation to any payment, application, or investment, or otherwise in relation to stock or the Redemption Fund Account, the Board may by Order require the Water Board to make good the default within a time therein limited; and if the default be in respect of any sum to be carried to the Redemption Fund Account, or the misapplication of any part of the moneys carried to that Account, the Board may by Order direct that the sum in that Order mentioned, not exceeding double the amount in respect of which default has been made, shall be carried to the Redemption Fund Account and be invested and applied in like manner as required by the Regulations in regard to other sums carried to that Account.

ARTICLE 37.—(1.) If at any time any dividend on any stock is unclaimed at the time for payment thereof, the same shall, nevertheless, on demand at any subsequent time whatsoever, be paid to the person showing his right thereto, but without interest in the meantime.

(2.) Where any dividend remains unclaimed for five years from the time for payment thereof the Water Board shall cause notice thereof to be sent by post in a registered letter addressed to the stockholder named in their books by the description and at the address therein appearing, and so at the expiration of three other successive periods of five years.

(3.) At the end of every successive period of five years from the day when the first dividend becomes payable on stock first issued, the Water Board shall publish an advertisement in a newspaper circulating in the County of London, stating what, if any, dividends on stocks have then been unclaimed for more than four years, and the names and addresses appearing in the stock register of the persons entitled to such dividends when the same became due.

(4.) At the end of every successive period of ten years from the day when the first dividend becomes payable on stock first issued the Water Board, unless it has been otherwise agreed between them and the registrar, may require the registrar to repay to them all dividends unclaimed during that period and then in his hands, and the Water Board shall cause the same or any other dividends unclaimed during that period to be carried to the Dividends Fund Account, and may deal therewith as they are by the Regulations empowered to deal with moneys carried to that account without prejudice, nevertheless, to the rights of any person to those dividends.

ARTICLE 38.—(1.) If at the end of a period of ten years after the date at which the Water Board, having power to redeem any stock, decide to redeem it, the Water Board, by reason of the holder of any such stock not being forthcoming, or by reason of any doubt as to the ownership of any such

Article 38.

stock, shall not be able to redeem the stock, the Water Board shall invest on statutory securities a sum equal to the nominal value of all such stock as cannot be redeemed by reason as aforesaid, and thereupon the stock shall be deemed to have been extinguished.

(2.) Any sums invested by the Water Board as aforesaid shall, unless sold for the purpose of satisfying any claim in respect of the stock represented by the same, be kept invested on statutory securities for a further period of ten years, after which time the Water Board may appropriate the said sums and any accumulations thereof for such purposes as the Board approve, without prejudice, nevertheless, to the rights of any person to the said sums or any part thereof.

ARTICLE 39.—When and so often as the Water Board, after the date of the first creation of stock, act upon a power conferred on them of raising money otherwise than by stock, they shall cause to be given to each lender of money so raised notice in writing, signed by the Clerk or other authorised officer of the Water Board, and stating the effect of Article 4.

ARTICLE 40.—The Water Board may by resolution revoke at any time, in whole or in part, any resolution for creation of stock theretofore passed by the Water Board if and so far as the same has not been acted on by the issue of stock thereunder, and notice of any such revocation shall forthwith be given to the Board.

ARTICLE 41.—Except as in the Regulations expressly provided, nothing in the Regulations shall relieve the Water Board from any obligation which may be imposed on them in relation to any statutory borrowing power by any Act of Parliament under or by which that power for the time being exists or is regulated.

ARTICLE 42.—(1.) Stock shall be deemed capital stock of a body corporate within the Forgery Act, 1861.

(2.) A stock certificate to bearer and a coupon connected therewith shall be deemed a stock certificate and coupon within the Forgery Act, 1870.

ARTICLE 43.—Any Order of the Board in pursuance of the Regulations may contain such provisions as the Board think necessary or proper for giving effect thereto, and shall, where the nature and terms of the Order and the circumstances of the case so require, be enforceable by writ of mandamus to be obtained by the Board out of the High Court, and any such Order may be from time to time cancelled or varied by the Board, as the circumstances of the case require.

ARTICLE 44.—Where the Bank of England are the registrar, they may with the sanction of the Water Board, from time to time issue any forms required for carrying into effect the provisions of the Regulations, and may, also from time to time make any Rules which are not inconsistent with the Regulations with respect to the following matters; that is to say,

(*a*.) The period for which coupons are to be given:

(*b*.) The mode in which the Bank of England are to act in issuing stock certificates to bearer, or entering in the transfer books the bearers of stock certificates to bearer:

(*c*.) The mode of proving the title of or identifying any person applying for a stock receipt or stock certificate, or stock certificate to bearer:

(*d*.) Anything necessary for carrying into effect such of the provisions of the Regulations as relate to or affect the Bank of England, or otherwise for the regulation of matters connected with the procedure of the

Article 44.

Bank of England in the exercise of the powers and in the discharge of the duties of the Registrar.

The Bank of England may, with the sanction of the Water Board, alter, vary, or repeal any such Rules, and make other Rules instead thereof, or in addition thereto, and any such Rules for the time being in force shall be duly observed.

ARTICLE 45.—Such fees, if any, as may from time to time be fixed by an Order made by the Board, on the application of the Water Board, may be taken by or on behalf of the Water Board, in respect of such matters as may be specified in the said Order.

ARTICLE 46.—Expenses of book-keeping and management and other current expenses from time to time incurred by the Water Board in the execution of the Regulations, including expenses connected with the formation, maintenance, investment, application, or management of or otherwise relating to any Redemption Fund, shall be defrayed out of the Water Fund.

ARTICLE 47.—The Regulations may be cited as "The Metropolitan Water Stock Regulations, 1903."

Given under the Seal of Office of the Local Government Board, this Sixth day of July, in the year One thousand nine hundred and three.

(L.S.) *Walter H. Long,*
President.

S. B. Provis,
Secretary.

In their Third Annual Report the Water Board say:—"The consent of the Local Government Board was obtained to the rate of interest being fixed at £3 per centum per annum, and also to the stock being made transferable by deed (common form). The Metropolitan Water (B) Stock is transferable in books free of stamp duty for which the Board pay to the Commissioners of Inland Revenue under agreement a composition of 1*s.* per cent. per annum on the nominal amount of stock existing from time to time. The Board, however, saw no reason to give the holders of (A) Stock a greater advantage than was possessed by the Irredeemable Stocks for which it was substituted, and this (A) Stock is therefore transferable by deed, subject to stamp duty, and a registration fee of 2*s.* 6*d.* is charged on every transfer."

STATUTORY RULES AND ORDERS, 1903.

No. 3.

LONDON, COUNTY.

WATER.

ORDER OF THE LOCAL GOVERNMENT BOARD, DATED JANUARY 9, 1903, UNDER THE METROPOLIS WATER ACT, 1902, PROVIDING AS TO THE CONSTITUTION, &C., OF JOINT COMMITTEES FOR APPOINTING MEMBERS OF THE METROPOLITAN WATER BOARD.

To the several Councils grouped as Constituent Authorities under the Metropolis Water Act, 1902, for the appointment of Members of the Metropolitan Water Board;—

And to all others whom it may concern.

Whereas by section 1 of the Metropolis Water Act, 1902 (hereinafter referred to as "the Act"), it is enacted that a Board, to be called the

Metropolitan Water Board (hereinafter referred to as "the Water Board"), shall be established for the purposes mentioned in the said section, and by sub-section (3) of that section it is enacted that, subject to the provisions of the Act, the Water Board shall consist of a chairman, a vice-chairman, and other members, and that the chairman and vice-chairman shall be appointed by the Water Board, and the other members shall be appointed by certain Councils, groups of Councils, and other bodies as follows:—

Fourteen by the London County Council.

Two by the Common Council of the City.

Two by the Council of the City of Westminster.

One by the Council of each of the other Metropolitan Boroughs.

One by the County Council of Essex.

Two by the Council of the Borough of West Ham.

One by the Council of the Urban District of East Ham.

One by the Council of the Urban District of Leyton.

One by the Council of the Urban District of Walthamstow.

One by the Councils of the Urban Districts of Buckhurst Hill, Chingford, Loughton, Waltham Holy Cross, Wanstead, and Woodford.

One by the County Council of Kent.

One by the Councils of the Urban Districts of Beckenham, Bromley, Chislehurst, Penge, Bexley, Dartford, Erith, and Footscray.

One by the County Council of Middlesex.

One by the Council of the Urban District of Tottenham.

One by the Council of the Urban District of Willesden.

One by the Council of the Borough of Ealing and the Councils of the Urban Districts of Acton and Chiswick.

One by the Councils of the Urban Districts of Brentford, Hampton, Hampton Wick, Hanwell, Heston and Isleworth, Sunbury, Teddington, and Twickenham.

One by the Councils of the Urban Districts of Edmonton, Enfield, and Southgate.

One by the Councils of the Urban Districts of Hornsey and Wood Green.

One by the County Council of Surrey.

One by the Council of the Borough of Kingston and the Councils of the Urban Districts of East and West Molesey, Esher and the Dittons, Ham, Surbiton, Barnes, the Maldens and Coombe, and Wimbledon.

One by the County Council of Hertfordshire.

One by the Conservators of the River Thames.

One by the Lee Conservancy Board.

And whereas by sub-section (5) of section 1 of the Act it is enacted that, subject to the provisions of that section, the provisions of the Third Schedule to the Act with respect to the constitution and proceedings of the Water Board shall have effect;

And whereas by section 37 of the Act, the expression "Constituent Authority" is defined as meaning a Council, group of Councils, or other body entitled to appoint one or more Members of the Water Board;

And whereas by the paragraph numbered 8 in the Third Schedule to the Act it is provided that a Member appointed by a Constituent Authority consisting of a group of Councils shall be appointed by those Councils acting through a Joint Committee;

And whereas by the paragraph numbered 9 in the Third Schedule to the Act, subject to any variation of representation according to the provisions of the Act, the number of Members of each Joint Committee, and the number of Members of the Joint Committee who are to be appointed by each of the several Councils grouped by the Act and named or described in the said paragraph are fixed, and the said numbers in relation to the several Joint Committees and Councils are those set forth in the Schedule to this Order;

And whereas by the paragraph numbered 11 in the Third Schedule to the Act it is provided that We, the Local Government Board, may make regulations as to the constitution, term of office, quorum, proceedings, officers, and place of meeting of a Joint Committee;

And whereas by the paragraph numbered 28 in the Third Schedule to the Act it is provided, amongst other things, that We shall take such steps as may be necessary for constituting the Water Board as soon as may be after the passing of the Act; and that all authorities and persons shall comply with any instructions issued by Us for that purpose:

Now therefore, for the purposes aforesaid in relation to the Constituent Authorities consisting of the groups of Councils named or described in the second column of the Schedule to this Order, and to the Joint Committees through whom the said Constituent Authorities will act, We, in pursuance of the hereinbefore recited powers, and of all other powers given to Us in that behalf, do hereby Order as follows:—

First appointment of members of Joint Committee.

ARTICLE I.—(1.) Each of the councils named or described in the second column of the Schedule to this Order shall, at a meeting of the council to be held within six weeks from the date of this Order, or within such further time as We may allow, proceed to appoint the number of members set opposite to the name or description of the council in the third column of the said Schedule, to represent the council on the Joint Committee for the group of councils within which the council is included.

(2.) Seven days' previous notice in writing of the meeting of the council, and of the intention to make the appointment, shall be given or sent to each member of the council by the clerk to the council, or the town clerk, as the case may be.

Qualification of members of Joint Committee.

ARTICLE II.—Every member appointed by a council to represent the council on a Joint Committee shall be appointed by the council from among the members of their own body.

Notification to Local Government

ARTICLE III.—Upon the first appointment by a council of a member or members, as the case may be, to represent the council on the Joint

Committee the clerk to the council, or the town clerk, as the case may be, shall forthwith notify in writing to Us the names, address, and occupation of each member so appointed.

Board of members first appointed on Joint Committee.

Tenure of office of members of Joint Committee.

Article IV.—A member of a Joint Committee shall continue in office until he dies, or resigns, or goes out of office as a member of the council by whom he was appointed a member of the Joint Committee:

Provided that a member of a Joint Committee who ceases to hold office by reason of his resignation, or going out of office as a member of such council, shall be re-eligible as a member of the Joint Committee if at the time of re-appointment he is qualified to be so re-appointed.

Supply of vacancies on Joint Committee.

Article V.—(1.) On a vacancy occurring in a Joint Committee by reason of the death or resignation of a member, or otherwise, the council by whom that member was appointed shall, subject to the provisions of this Order, appoint another member in his place.

(2.) The person appointed to fill the vacancy shall be appointed at a meeting of the council to be held within six weeks after the occurrence of that vacancy, or within such further time as We may allow.

(3.) Seven days' previous notice in writing of the meeting of the council and of the intention to make the appointment shall be given or sent to each member of the council by the clerk to the council, or the town clerk, as the case may be.

(4.) The clerk to the council, or the town clerk, as the case may be, shall, as soon as the appointment has been made, notify in writing to the clerk to the Joint Committee the names, address, and occupation of the person so appointed.

Meetings and quorum of Joint Committee.

Article VI.—(1.) The time and place of holding the first meeting of each Joint Committee shall be fixed by Us, and the subsequent meetings of the Joint Committee shall be held at such times and places as the Joint Committee appoint.

(2.) The quorum of each Joint Committee shall be one-third of the whole number of the Joint Committee, provided that in no case shall the quorum be less than three.

(3.) A chairman shall be elected at every meeting of each Joint Committee; and the election of the chairman shall be the first business to be transacted at that meeting.

(4.) Any question to be determined at a meeting of each Joint Committee shall be decided by a majority of the votes of the members present and voting on that question; and, in the case of equality of votes, the chairman shall have a second or casting vote.

(5.) Notices of all meetings of each Joint Committee shall be delivered or sent by post so as to reach the last known place of abode or business in England of each member of the Joint Committee three clear days before the day of meeting.

First appointment of

Article VII.—Each Joint Committee shall at their first meeting, or at an adjournment of that meeting, appoint a person to be the Member to members of Water Board.

represent on the Water Board the Constituent Authority consisting of the group of councils acting through the Joint Committee, and the chairman at the said meeting of the Joint Committee shall forthwith notify in writing to Us the names, address, and occupation of the person so appointed a Member of the Water Board.

Future triennial appointment of member of Water Board.

ARTICLE VIII.—During the month of May, one thousand nine hundred and seven, and during the month of May in every third year thereafter, each Joint Committee shall, at a meeting duly convened for the purpose, appoint a person to be the Member to represent on the Water Board the Constituent Authority consisting of the group of councils acting through the Joint Committee, and the clerk to the Joint Committee shall forthwith notify in writing to the clerk to the Water Board the names, address, and occupation of the person so appointed a Member of the Water Board.

Casual vacancy in Water Board.

ARTICLE IX.—When a casual vacancy occurs in the Water Board, and the casual vacancy is one to be filled by a Constituent Authority consisting of a group of councils acting through a Joint Committee, the Joint Committee shall, at a meeting duly convened for the purpose, appoint a person to be the Member to represent that Constituent Authority on the Water Board in the place of the person who has ceased to be a Member, and the clerk to the Joint Committee shall forthwith notify in writing to the clerk to the Water Board the names, address, and occupation of the person so appointed a Member of the Water Board.

Clerk to Joint Committee.

ARTICLE X.—(1.) Each Joint Committee shall at their first meeting, or at an adjournment of that meeting, and thereafter as occasion shall require, appoint a clerk.

(2.) The Joint Committee may pay their clerk such reasonable remuneration as they think fit, and the clerk shall be removable by the Joint Committee at their pleasure.

Expenses of Joint Committee.

ARTICLE XI.—(1.) The expenses incurred by each Joint Committee in carrying out the purposes of the Act, or of this Order, shall be defrayed from time to time, as occasion may require, by the Constituent Authority consisting of the group of councils acting through the Joint Committee.

(2.) The contribution of each council to the said expenses shall be in the proportion which the number of members representing the council on the Joint Committee bears to the total number of members of the Joint Committee.

Given under the Seal of Office of the Local Government Board, this ninth day of January, in the year one thousand nine hundred and three.

(L.S.) WALTER H. LONG,

President.

S. B. PROVIS,

Secretary.

SCHEDULE.

Number of Members of Joint Committee. 1.	Grouped Councils. 2.	Number of Members to be appointed by each Council included in the Group. 3.
12	The Council of the Urban District of Buckhurst Hill...	1
	The Council of the Urban District of Chingford ...	1
	The Council of the Urban District of Loughton ...	1
	The Council of the Urban District of Waltham Holy Cross	2
	The Council of the Urban District of Wanstead ...	3
	The Council of the Urban District of Woodford ...	4
20	The Council of the Urban District of Beckenham ...	4
	The Council of the Urban District of Bromley... ...	4
	The Council of the Urban District of Chislehurst ...	1
	The Council of the Urban District of Penge	3
	The Council of the Urban District of Bexley	2
	The Council of the Urban District of Dartford... ...	2
	The Council of the Urban District of Erith	3
	The Council of the Urban District of Footscray ...	1
8	The Council of the Borough of Ealing	3
	The Council of the Urban District of Acton	3
	The Council of the Urban District of Chiswick ...	2
21	The Council of the Urban District of Brentford ...	3
	The Council of the Urban District of Hampton ...	2
	The Council of the Urban District of Hampton Wick...	1
	The Council of the Urban District of Hanwell... ...	2
	The Council of the Urban District of Heston and Isleworth	5
	The Council of the Urban District of Sunbury... ...	1
	The Council of the Urban District of Teddington ...	3
	The Council of the Urban District of Twickenham ...	4
5	The Council of the Urban District of Edmonton ...	2
	The Council of the Urban District of Enfield	2
	The Council of the Urban District of Southgate ...	1
7	The Council of the Urban District of Hornsey	5
	The Council of the Urban District of Wood Green ...	2
33	The Council of the Borough of Kingston	7
	The Council of the Urban District of East and West Molesey	2
	The Council of the Urban District of Esher and the Dittons	3
	The Council of the Urban District of Ham	1
	The Council of the Urban District of Surbiton... ...	4
	The Council of the Urban District of Barnes	4
	The Council of the Urban District of the Maldens and Coombe	2
	The Council of the Urban District of Wimbledon ...	10

METROPOLITAN WATER BOARD (CHARGES) ACT, 1907.

(7 EDW. 7, c. CLXXII.)

An Act to provide for uniform scales of charges for water applicable throughout the limits of supply of the Metropolitan Water Board and for other purposes. [28th August 1907.]

Whereas by the Metropolis Water Act 1902 (in this Act referred to as "the Act of 1902") the Metropolitan Water Board (in this Act referred to as "the Board") were established for the purpose of acquiring by purchase and of managing and carrying on the undertakings of the companies mentioned in the First Schedule to this Act and also the water undertakings of the councils of the urban districts of Tottenham and Enfield and generally for the purpose of supplying water within the area described in the Act of 1902:

And whereas the Board have acquired and are now managing and carrying on the said undertakings and are supplying water within an area which comprises the whole of the administrative county of London and parts of the counties of Middlesex Surrey Kent Essex and Hertford:

And whereas it is provided by the Act of 1902 that the Board shall within three years after the appointed day referred to in that Act (namely the twenty-fourth day of June one thousand nine hundred and four) introduce into Parliament a Bill providing for uniform scales of charges applicable throughout their limits of supply:

And whereas it is expedient to provide for such uniform scales of charges and that the provisions contained in this Act relating to the supply of water should be made:

And whereas the purposes of this Act cannot be effected without the authority of Parliament:

May it therefore please Your Majesty that it may be enacted and be it enacted by the King's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same as follows (that is to say):—

The following account of the proceedings on this Bill and of the steps taken by the Water Board after it became an Act is taken from the Fifth Annual Report of the Board.

The opposition to the Bill had been mainly directed to the following points, viz:—

(1) The desirability or otherwise of accepting rateable value as the basis of assessment for domestic charges, both inside and outside the county of London, that basis having hitherto applied only in the county of London.

(2) The advantages of a uniform rate of 5 per cent. in lieu of a graduated scale, the old scales of charges varying, after allowing for the charges for "extras" (*i.e.*, baths, water-closets, etc., etc.) from 3 per cent. to as much as nearly 12 per cent.

(3) The allowance of a rebate from the ordinary domestic charges in the case of special properties, the New River Company having allowed a special rebate in the case of certain classes of property in the city of London.

(4) The conditions (if any) under which a person should be entitled to a supply of water for trade purposes.

(5) The question as to whether the charges to be made for trade supplies should be governed only by a maximum charge, or whether it should be regulated by a scale to be embodied in the Bill.

(6) The desirability or otherwise of extending the existing definition of "public purposes" for which water was proposed by the Bill to be supplied at the rate of 6d per 1,000 gallons.

The decisions of the Joint Committee [on the Bill] on these points were as follows:—

(1) That the basis of assessment for domestic charges should be the rateable value—whether the premises concerned were within or without the county of London..

(2) That the charge for domestic purposes should be a uniform rate not exceeding 5 per cent. on the rateable value—to include the charges for "extras."

(3) That any rebate allowed in the case of special properties should be uniform and applicable to the whole area.*

(4) That traders should not be bound to have a domestic supply in order to be entitled to a supply by measure for trade purposes.

(5) That the charges for trade supplies should be regulated by a scale to be embodied in the new Act (see s. 16).

(6) That the definition of "public purposes" should not be extended, and that supplies for those purposes should be given at the rate of 6d. per 1,000 gallons.

Parliament subsequently endorsed the findings of the Joint Committee, and the Bill received the Royal Assent on 28th August, 1907,—the Act coming into operation on 1st April, 1908.

* * * * *

On 20th December, 1907, the Appeal and Assessment Committee submitted a report to the Board on the subject of the steps necessary to be taken to bring the Act into operation, and the Board, on the consideration of that report, and of reports submitted by the Appeal and Assessment Committee

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* The conditions on which it was ultimately decided that a rebate should be allowed were as follows :—

(*a*) The building must be occupied solely for the purpose of any trade, business, profession, or calling, by which the occupier seeks a livelihood or profit ;

(*b*) It must be occupied as a separate tenement assessed in a sum exceeding £300 per annum ;

(*c*) It must not be charged with the payment of inhabited house duty ; and

(*d*) The rebate must not reduce the water rate to a less sum than would be payable on a rateable value of £300.

See also the resolutions passed by the Board as to "Domestic Rebates," *post*, p. 686, and "Rebates from Domestic Water Rate," *post*, p. 688, at later dates, have arrived at certain conclusions on various matters arising under the Act. The most important of these conclusions are indicated in the following resolutions passed by the Board from time to time during the year now under review :—

Domestic Supply.

That the rate per annum for a supply of water for domestic purposes under s. 8 of the Metropolitan Water Board (Charges) Act, 1907, shall, until further order, be 5 per centum of the rateable value of the house or building or part of a house or building in respect of which the supply is required.

Domestic Rebates.

That the rebate to be made or allowed under s. 9 of the Metropolitan Water Board (Charges) Act, 1907, from the water rate payable in respect of a supply of water for domestic purposes shall until further order be 20 per centum of such water rate.*

Non-domestic Supply by Measure.

That the charge for a supply of water by measure for purposes other than domestic under s. 16 of the Metropolitan Water Board (Charges) Act, 1907, be until further order the rates set forth in that section, subject to the statutory minimum charge of 22*s.* 11*d.* per quarter.

Building Supplies.

That pursuant to the authority in that behalf, given to them by s. 17 of the Metropolitan Water Board (Charges) Act, 1907, the Board do hereby determine that, in lieu of affording supplies for building purposes under the said section by measure, such supplies be afforded from 1st April, 1908, until further order at the rate of 7*s.* per £100 of the probable total cost of the building or part of a building for which the supply is required, after making such allowance as the Board by their Appeal and Assessment Committee may think reasonable for decorative or iron or steel work not requiring the use of water.

Hire of Meter.

That as from 1st April, 1908, and until further order the rent to be taken under the Metropolitan Water Board (Charges) Act, 1907 (s. 18), from consumers of water in respect of the hire of any meter or instrument for measuring water shall be the respective sums in that section mentioned.

Hospitals.

That any hospital or sanatorium wholly or partly supported by endowments or voluntary contributions and not carried on for purposes of private profit or gain be supplied until further order under s. 8 of the Metropolitan Water Board (Charges) Act, 1907.

Schools, Flats, Police and Fire Stations.

That provided and non-provided schools, blocks of dwellings and flats, fire stations and police stations be supplied until further order under ss. 8 and 9 of the Metropolitan Water Board (Charges) Act, 1907.

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* See also further resolution as to "Rebates from Domestic Water Rate," *post*, p. 688.

Theatres and Music Halls.

That theatres and music halls be supplied until further order under ss. 8 and 9 of the Metropolitan Water Board (Charges) Act, 1907.

Hotels.

That hotel supplies be afforded until further order under s. 8 of the Metropolitan Water Board (Charges) Act, 1907, plus meter charges for the supply to steam boilers and so forth and the usual fees for fire hydrants, except where the fittings are not approved by the Board or there are other circumstances rendering another method of supply desirable.

That in cases not falling within the foregoing resolution, the supply be afforded until further order under an agreement providing for the installation of a meter and the payment of a minimum rate equal to 5 per centum on the rateable value, the consumer *to be entitled to take* 1,000 *gallons for each shilling of the minimum rate, and the balance of his consumption* to be charged on the trade scale, commencing at 11*d*. per 1,000 gallons.*

Workhouses and Workhouse Infirmaries.

That supplies to workhouses and workhouse infirmaries be afforded until further order under s. 8 of the Metropolitan Water Board (Charges) Act, 1907, plus meter charges for the supply to steam boilers and so forth and the usual fees for fire hydrants, except where the fittings are not approved by the Board or there are other circumstances rendering another method of supply desirable.

That in cases not falling within the foregoing resolution, the supply be afforded until further order under an agreement providing for the installation of a meter and the payment of a minimum rate equal to 5 per centum on the rateable value, the consumer to be entitled to take 1,000 gallons for each shilling of the minimum rate, and the balance of his consumption to be charged on the trade scale, commencing at 11*d*. per 1,000 gallons.

Public Houses.

That in the case of public houses, the domestic scale be accepted in full satisfaction in the absence of special circumstances.

Public Conveniences, Cattle Troughs and Fountains.

That the supplies to public sanitary conveniences, cattle troughs and drinking fountains be given under s. 24 of the Metropolitan Water Board (Charges) Act, 1907, at the rates prescribed by s. 16 of that Act, each supply being treated separately but without the imposition of a minimum rent per quarter.

Gardens.

(i.) That whilst reserving power to charge by meter or on area, the following scale be adopted for garden supplies where the consumption of water and the size of the garden are not in the opinion of the Board exceptional, viz. :—

	£	s.	
Rateable value not exceeding ..	50	10	per season.
do. do. do.	100	15	do.
do. do. do.	200	20	do.

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* This resolution was varied by a later resolution as to "Combined Supplies by Meter." See *post*, p. 688.

(ii.) Where the premises exceed £200 rateable value or a sprinkler is used the garden supply to be separately afforded by meter at the trade scale, but without imposing a minimum rent.

Horses, Carriages and Automobiles.

That the following scale be adopted for horses, carriages and automobiles :—

(i.) When the supply is not taken by meter the following annual charges to be made :—

		s.	d.	
Horses (Private)	.. ..	8	0	each.
do. (Trade)	.. . .	6	0	,,
Carriages (Private) 2 wheels	.. ..	5	0	,,
,, (,,) 4 ,,	.. ..	10	0	,,
,, (Trade) 2 ,,	.. ..	2	6	,,
,, (,,) 4 ,,	.. ..	5	0	,,
Motors (Private)	.. ..	20	0	,,
,, (Trade)	.. Dependent upon horse power, etc.			

(ii.) Where more than five horses are kept, or the aggregate charges under the above scale will exceed £1 2*s.* 11*d.* per quarter, the supply to be taken by meter under s. 16 of the Metropolitan Water Board (Charges) Act, 1907.

Combined Supplies by Meter.—The following resolution was passed by the Board on 10th April, 1908 :—

> That, until further order and notwithstanding any previous resolution of the Board, the supply to any house or building whereof any part is used for any trade, manufacturing or business purpose for which water is used, be (if so desired by the consumer) afforded by measure at the rates prescribed by s. 16 of the Metropolitan Water Board (Charges) Act, 1907, subject to the payment of a minimum sum calculated at 5 per cent. on the rateable value of the house or building in respect of which the supply is required.

Rebates from Domestic Water Rate.—On the 22nd May, 1908, the Board passed the following resolution :—

> That premises which otherwise comply with the qualifying conditions for rebate under s. 9 of the Metropolitan Water Board (Charges) Act, 1907, shall not be wholly deprived of such rebate on the ground only that a portion of such premises is charged with the payment of inhabited house duty, but that the rebate be allowed in respect of so much of the premises as is not charged with the payment of such duty.

Allowances for Empty Premises.—And on the 19th June the following resolution was passed by the Board :—

> That in respect of properties the water rates on which are payable by the owners, an allowance of 75 per cent. be made on the actual periods of non-occupation, and that this arrangement apply also where practicable to properties the water rate on which is payable by the tenant.

1. This Act may be cited as the Metropolitan Water Board (Charges) Act 1907.

2. This Act shall come into operation on the first day of April one thousand nine hundred and eight which date is in this Act referred to as " the commencement of this Act."

Incorporation of parts of Waterworks Clauses Act, 1847.

3. The following parts of the Waterworks Clauses Act 1847 (namely):—

The provisions with respect to the supply of water to be furnished by the undertakers (except sections 35 and 36);

The provisions with respect to the communication pipes to be laid by the inhabitants;

The provisions with respect to the payment and recovery of the water rates; and

The provisions with respect to access to the Special Act (sections 90 and 91)

shall (so far as the same are applicable for the purposes of and are not varied by or inconsistent with this Act) be incorporated with and form part of this Act and apply as from the commencement of this Act:

And in and for the purposes of this Act the several words and expressions to which by the said Waterworks Clauses Act 1847 meanings are assigned shall have the same respective meanings unless there be something in the subject or context repugnant to such construction:

Provided that in and for the purposes of this Act the expressions "the undertakers" and "the Company" in the said incorporated provision shall mean the Board and that the expression "the Special Act" where used in the said incorporated provisions shall include this Act.

See s. 74 of the Metropolitan Water Board (Various Powers) Act, 1907, as to the powers of the Board to inspect valuation lists, etc., so as to obtain evidence of rateable value of premises supplied with water.

As to s. 72 of Waterworks Clauses Act, 1847.

4. In and for the purposes of this Act section 72 of the Waterworks Clauses Act 1847 as incorporated with this Act shall be read and have effect as if the words "rateable value" had been inserted therein instead of the words "annual value" and as if the words "twenty pounds" had been inserted therein instead of the words "ten pounds."

Interpretation.

5. In this Act unless the subject or context otherwise require—

The expression "the limits of supply" means the limits within which the Board are from time to time authorised to supply water;

"Owner" has the same meaning as that assigned to the said word by section 72 of the Waterworks Clauses Act 1847.

Repeal of certain enactments.

6. In order to make uniform throughout the limits of supply the obligations of the Board with respect to the supply of water the Acts specified in the first column of the Second Schedule to this Act shall be and the same are hereby repealed to the extent mentioned in the second column of the said schedule and the provisions contained in this Act shall apply and have effect in lieu thereof:

Sect. 6.

Provided that all rates rents and charges due or accruing due to the Board down to the commencement of this Act may be collected sued for and recovered as if this Act had not been passed.

Obligations of Board with respect to laying of mains and pipes.

7. Subject to the provisions of this Act the Board shall cause service mains or pipes (not being communication pipes) to be laid down and a supply of pure and wholesome water for domestic purposes to be brought to every part within the limits of supply whereunto they shall be required by so many owners or occupiers of houses or buildings or parts of houses or buildings occupied as separate tenements in that part of the limits that the aggregate amount of water rate payable by them annually under this Act in respect of the supply so required shall be not less than one-tenth part of the expense of providing and laying down such mains or pipes Provided that no such requisition shall be binding on the Board unless such owners or occupiers shall severally execute an agreement binding themselves to take such supply of water for three successive years at least.

Domestic supply and charges.

8. Subject to the provisions of this Act the Board shall at the request of the owner or occupier of any house or building or part of a house or building occupied as a separate tenement in any street within the limits of supply in which any service main or service pipe of the Board shall be laid or of any person who under the provisions of this Act shall be entitled to require a supply of water for domestic purposes furnish to such owner or occupier or other person by means of a communication pipe or communication pipes and other necessary and proper apparatus to be provided and laid down and maintained by him and at his cost a sufficient supply of water for domestic purposes at a rate per annum which shall not exceed five per centum of the rateable value of the house or building or part of a house or building in respect of which the supply is required and such rate shall subject to the provisions of this Act be charged uniformly under like circumstances to all consumers entitled to such supply.

In *Northampton Corporation* v. *Ellen*, cited *ante* p. 513, it was held that, under the Acts there under consideration, a differential rate might be made. The concluding words of this section, however, preclude this in the area of the Metropolitan Water Board.

The plaintiffs manufactured gas at works within the limits of supply of the defendant Board, and supplied the same through their mains to a large district, and they provided at their works lavatories and other conveniences for their employés. No one resided at the works, which were not assessed to inhabited house duty. The plaintiffs contended that under s. 16 of the Metropolitan Water Board (Charges) Act, 1907, they were entitled to a supply of water by meter "for purposes other than domestic," *i.e.*, for trade purposes, at the rate mentioned in that section, on the ground that the conveniences were necessary and ancillary to their business, which was a "trade, manufacture or business" within the exception in s. 25 of the Act. The Board contended that the supply of water for the conveniences was for a "domestic purpose," to be charged for at a rate to be ascertained under ss. 8, 9 and 13 of the Act. *Held*, that the question was not whether the plaintiffs' premises were used for business purposes, but whether the water

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was used for business or for domestic purposes, and that the uses in the present case were domestic, and, therefore, that the plaintiffs were entitled to a supply under ss. 8, 9 and 13, and not under s. 16 of the Act (*South Suburban Gas Co.* v. *Metropolitan Water Board*, [1909] 2 Ch. 666).

A question as to what was the nature of a supply of water to a factory was raised in a more recent case. The defendants required water for their employés to use for drinking and personal washing, and to cleanse the urinals and closets which the employés used. No one resided on the factory premises. The defendants contended that the supply was "non-domestic." The learned Judges composing the Divisional Court differed in opinion, PHILLIMORE, J., holding that the water was supplied for trade purposes, and Lord COLERIDGE, J., holding that the supply was domestic (*Metropolitan Water Board* v. *Colley's Patents, Ltd.*, *Times*, 22nd December, 1910). On appeal it was held by FARWELL, L.J., and KENNEDY, L.J. (VAUGHAN WILLIAMS, L.J., dissenting), that the Water Board were entitled to be paid in respect of such supply according to the rateable value of the defendants' premises (W. N., March 11th, 1911).

See the cases collected at pp. 468 *et seq.*, *ante*, as to the meaning of "domestic use."

See also *Metropolitan Water Board* v. *London, Brighton and South Coast Rail. Co.*, cited under s. 25, *post.*

In *Stacey* v. *Metropolitan Water Board and Others* (1910), 9 L. G. R. 174, PHILLIMORE, J., held that s. 8, *supra*, and s. 19, *post*, have altered the law as laid down in *Chapman* v. *Fylde Water Co.*, *ante*, pp. 454, 484, and that an occupier within the area of the Water Board is now under an obligation to repair and maintain his communication pipe, and that this obligation extends to pipes laid prior to the passing of the Act of 1907. In *Batt* v. *Metropolitan Water Board* (1911), 75 J. P. 174, a Divisional Court held that ss. 8 and 19 of the Act were not retrospective, and followed *Chapman* v. *Fylde Water Co.*, *ante*, pp. 454, 484.

Rebates to be made in certain cases.

9. Where under the foregoing provisions of this Act the Board furnish a supply of water for domestic purposes to any house or building or part of a house or building occupied solely for the purposes of any trade or business or of any profession or calling by which the occupier seeks a livelihood or profit and occupied as a separate tenement which is assessed to the poor rate or other rate in which such last-mentioned rate is included in a sum exceeding three hundred pounds per annum and is not charged with the payment of inhabited house duty the Board shall make or allow from the water rate payable in respect of such supply a rebate or discount of such amount (not being less than twenty per centum or more than thirty per centum of such water rate) as the Board may from time to time determine and such rebate or discount shall from time to time be made or allowed from the water rate payable in respect of every such supply as aforesaid and at a uniform rate per centum:

Provided that in making or allowing such rebate or discount the water rate shall not in any case be less than would have been payable in respect of any house or building or part of a house or building occupied as a separate tenement assessed to the poor rate or other such rate as aforesaid in a sum of three hundred pounds per annum.

See *South Suburban Gas Co.* v. *Metropolitan Water Board*, and *Metropolitan Water Board* v. *Colley's Patents, Ltd.*, cited under s. 8.

Inspection, etc. of lists of houses exempt from inhabited house duty.

10. In order to ascertain for the purposes of this Act whether any house or building or part of a house or building is or is not charged with the payment of inhabited house duty any person having the custody of any list of assessments to or exemptions from such duty or any official document relating thereto shall on a request in writing by the clerk of the Board make and transmit to the Board copies of or extracts from such list or document such copies or extracts to be certified as correct by the officer preparing the same or permit such copies or extracts to be made by such persons as the clerk of the Board may in that behalf direct.

Any such certified copy or extract as aforesaid shall in all proceedings and for all purposes be admissible and received as sufficient evidence of the matters therein stated.

As to charges for supply for domestic purposes on Bishop of London's estate, Paddington.

11.—(1) As from the commencement of this Act until the thirty-first day of March one thousand nine hundred and thirty-three section IV. (Rates at which water is to be supplied in part of Paddington for domestic purposes) of the Grand Junction Waterworks Act 1856 shall be read and have effect as if the rate specified in the section of this Act of which the marginal note is " Domestic supply and charges " had been therein referred to instead of the several rates specified in section 46 of the Grand Junction Waterworks Act 1852 and as from the first day of April one thousand nine hundred and thirty-three the said Grand Junction Waterworks Act 1856 shall be and the same is hereby repealed.

(2) Nothing in this section shall deprive any person of any rebate or discount to which he may be entitled under the section of this Act of which the marginal note is " Rebates to be made in certain cases " and such rebate or discount shall be calculated upon the net amount chargeable pursuant to the foregoing subsection of this section.

Penalty for neglect to supply water for domestic use.

12. If for twenty-eight days after demand in writing made to the Board and tender made to the Board of such an agreement signed by owners or occupiers to take and pay for a supply of water for domestic purposes for three years or more as is by this Act provided for the Board neglect to lay down service mains or pipes in the manner hereinbefore directed and to provide by means of a communication pipe or communication pipes and other necessary and proper apparatus to be provided and laid down and maintained by and at the cost of such owners or occupiers such supply of water the Board shall on summary conviction of any such neglect forfeit to each such owner and occupier by way of penalty the amount of rate which he would be liable to pay under such agreement and also the further sum of forty shillings for every day during which they neglect to lay down such mains or pipes or to provide such supply of water Provided that the Board shall not be liable to any penalty for not laying down any such main or pipe if they be prevented so doing by any unavoidable cause or accident or for not supplying water if the failure to furnish such supply arise from frost unusual drought or other unavoidable cause or accident.

Mode of determining rateable value.

13.—(1) The rateable value of any house or building or part of a house or building for the purposes of this Act shall be determined by the valuation list in force at the commencement of the quarter for which the water rate accrues or (if there is no such list in force) by the last rate made for the relief of the poor or other rate in which such last-mentioned rate is included:

Provided that if no rateable value be assigned in any such valuation list as aforesaid to any house or building or part of a house or building and such house or building or part of a house or building is not rated to any rate made for the relief of the poor or to any such other rate as aforesaid the annual value of such house or building or part of a house or building determined in manner provided by section 68 of the Waterworks Clauses Act 1847 shall for the purposes of this Act be deemed to be the rateable value of such house or building or part of a house or building.

(2) Subject to the foregoing provisions of this section the Water Rate Definition Act 1885 shall extend and apply throughout the limits of supply and in construing the proviso to section 1 of that Act the words "rateable value" shall be substituted for the words "annual value."

As to valuation of Government buildings.

14. Where in respect of any building in the occupation of His Majesty or any department of His Majesty's Government contributions in lieu of rates are paid by the Treasury the value at which the building is assessed for the purpose of such contributions shall for the purposes of this Act be deemed to be the rateable value thereof.

Dates for payment of water rates.

15. Notwithstanding anything contained in section 70 of the Waterworks Clauses Act 1847 the quarterly days for payment of water rates to the Board shall be the first day of April the first day of July the first day of October and the first day of January in each year.

Supply by measure.

16.—(1) The Board shall at the request of any owner or occupier of any premises situate in or adjoining any street in which any main or service pipe of the Board is or shall be laid who requires for use on such premises a supply of water by measure for purposes other than domestic and by means of communication pipes and other necessary and proper apparatus to be provided, laid, and maintained by and at the cost of the person requiring such supply afford a suppply of water by means of a meter or other fit and sufficient instrument or apparatus supplied (at the cost of such person as aforesaid) or approved by the Board for measuring and ascertaining the quantity of water so supplied.

(2) The Board shall charge for any supply furnished by them under the last preceding sub-section of this section not exceeding the following rates for every one thousand gallons (that is to say):—

When the quarterly consumption of water does not exceed fifty thousand gallons elevenpence;

When exceeding fifty thousand gallons and not exceeding one hundred thousand gallons tenpence;

When exceeding one hundred thousand gallons and not exceeding two hundred thousand gallons ninepence and one halfpenny ;

When exceeding two hundred thousand gallons and not exceeding five hundred thousand gallons ninepence ;

When exceeding five hundred thousand gallons and not exceeding one million gallons eightpence and one halfpenny ;

When exceeding one million gallons and not exceeding three million gallons eightpence ;

When exceeding three million gallons and not exceeding five million gallons sevenpence ;

When exceeding five million gallons sixpence and one eighth of a penny :

Provided that the Board shall be entitled to charge for any such supply a sum of not less than twenty-two shillings and elevenpence in any quarter of a year, and shall not be required to furnish any such supply for hydraulic power or in any greater quantity than five hundred thousand gallons in any day of twenty-four hours save to such consumers as may have during any day in the year ending the thirty-first day of March, one thousand nine hundred and seven received a supply in excess of five hundred thousand gallons, in which case the Board shall, if required, continue to give to such consumer a daily supply not exceeding the quantity so received :

Provided also that the whole of the water taken within any railway premises which form one area for railway purposes, and are connected otherwise than by the running lines of the railway company shall be reckoned as one supply and chargeable accordingly notwithstanding that the water may in fact be delivered thereat through two or more meters pipes or other necessary and proper instruments :

Provided further that the whole of the water furnished to any person within any premises which form one area for trading or manufacturing purposes shall be reckoned as one supply and chargeable accordingly notwithstanding that the water may in fact be delivered thereat through two or more meters pipes or other necessary and proper instruments :

Provided also that the provisions of this section shall not prejudice any right which the London Hydraulic Power Company may have under this section to require a supply for the purposes of their trade or business.

(3) The said rates shall be charged uniformly under like circumstances to all consumers entitled to and receiving a supply under this section and the Board shall not in the case of any supply exceeding twenty-five thousand gallons charge for any such supply a greater sum than they would be entitled to charge if the quantity of water supplied were just sufficient to bring such supply within the next division of the above-mentioned scale of rates relating to a supply of a greater quantity whereon a lower rate for every one thousand gallons is chargeable.

(4) The Board shall not be liable to any penalty or damages for not supplying water under this section if the failure to furnish such supply arises from frost, unusual drought, or other unavoidable cause or accident.

See *South Suburban Gas Co.* v. *Metropolitan Water Board*, and *Metropolitan Water Board* v. *Colley's Patents, Ltd.*, cited under s. 8, *ante*, p. 690.

Supply for building purposes.

17. Any builder being about to erect any building or part of a building who shall require a supply of water for that purpose shall be deemed to be the occupier of premises within the meaning and for the purposes of the section of this Act relating to "Supply by measure" Provided that if the Board so determine they may instead of affording the required supply by measure afford the same at a rate not exceeding seven shillings per hundred pounds of the probable total cost after making such allowance as the Board may think reasonable for decorative or iron or steel work not requiring the use of water.

Meter rents.

18. The Board shall not take or recover from any consumer of water in respect of the hire of any meter or instrument for measuring water any rent in excess of the following respective sums where the diameter of the inlet and outlet of such meter or instrument does not exceed the dimensions hereinafter respectively specified (that is to say):—

Not exceeding three eighths of an inch one shilling and sixpence per quarter;

Not exceeding half an inch two shillings per quarter;

Not exceeding three quarters of an inch two shillings and sixpence per quarter;

Not exceeding one inch three shillings and sixpence per quarter;

Not exceeding an inch and a quarter four shillings per quarter;

Not exceeding an inch and a half five shillings per quarter;

Not exceeding two inches seven shillings and sixpence per quarter

Not exceeding three inches ten shillings per quarter;

Not exceeding four inches twelve shillings and sixpence per quarter;

Not exceeding five inches fifteen shillings per quarter;

Not exceeding six inches seventeen shillings and sixpence per quarter;

Not exceeding eight inches twenty-five shillings per quarter.

As to breaking up ground for maintaining communication pipes.

19. For the purpose of complying with any obligation under this Act to maintain any pipe or apparatus the person liable to maintain the same shall have the like power to open the ground as is conferred upon him by sections 48 to 52 of the Waterworks Clauses Act 1847 in relation to the laying of communication pipes.

See the cases cited under s. 8, *ante*, pp. 690, 691.

Supply to houses partly used for trade etc.

20. The Board shall not be bound to afford a supply of water otherwise than by measure to any house or building whereof any part is used for any trade or manufacturing purpose for which water is used or to

Sect. 20. any common lodging-house barracks workhouse or other public institution or building:

Provided that where the Board decline to afford otherwise than by measure any such supply as aforesaid they shall if required by the person who but for the provisions of this section would have been entitled to demand such supply furnish to the building in respect of which the supply is required a sufficient supply of water upon and subject to the terms and conditions contained in the section of this Act relating to "Supply by measure" and subject to the next following proviso (that is to say) :—

> Provided that (except in the case of a supply by measure under this section to barracks or other buildings for the time being in the occupation of His Majesty or of any department of His Majesty's Government for public purposes) the Board may require that the sum to be paid for any such supply by measure shall not be less than the sum which would have been chargeable in respect of such supply had the supply been given under the provisions of this Act which relate to the supply for domestic purposes otherwise than by measure and the charges therefor.

For the purposes of this section the expression "public institution or building" shall not include any hospital or sanatorium wholly or partly supported by endowments or voluntary contributions and not carried on for purposes of private profit or gain.

As to supply for hydraulic power.

21. The Board may from time to time if they so determine at the request of any person desiring a supply of water under pressure for the purpose of supplying motive power by hydraulic pressure for any purpose to which such power is or may be applicable enter into and carry into effect an agreement or agreements with any such person for affording him such a supply at such rates and charges and upon such terms and conditions as may from time to time be agreed upon.

As to height at which supplies are to be furnished.

22. Nothing in this Act shall alter or affect any enactment in force at the commencement of this Act prescribing the height above which the Board are not bound to supply water but the Board shall not be entitled to charge any rate in addition to the rates by this Act authorised for any supply of water constituting a high service within the meaning of any Act relating to the Board or their undertaking in force immediately prior to the commencement of this Act.

Board not to be bound to supply in parts supplied by other bodies.

23. Notwithstanding anything in this Act the Board shall not be bound to furnish any supply of water or lay down any pipe for such purpose in any part of the limits of supply which part is for the time being supplied with water by any company or by any body or authority other than the Board.

Power to supply by agreement in certain cases.

24. The Board may notwithstanding anything contained in this Act by agreement with any person or body desiring a supply of water for any purpose in any part of the limits of supply furnish such supply upon such terms and conditions as to payment and otherwise as may be agreed upon:

Provided that nothing in this section shall prejudice or affect the terms upon which any person or body is under the provisions of this Act entitled to require a supply of water for any purpose:

Provided also that the terms and conditions upon which a supply of water is given by the Board under this section shall be the same under like circumstances to all consumers.

Defining "domestic purposes."

25. In and for the purposes of this Act the expression "domestic purposes" shall be deemed to include waterclosets and baths constructed or fitted so as not to be capable of containing when filled or filled up to the overflow or waste pipe (if any) more than eighty gallons but shall not include a supply of water for any of the following purposes (namely):

Steam gas motor and other like engines;

Railway purposes;

Ventilating purposes;

Working any machine or apparatus;

Consumption by or washing of horses or cattle;

Washing carriages or other vehicles;

Watering gardens by means of any outside tap or any hose tube pipe sprinkler or other like apparatus;

Fountains or any ornamental purpose;

Cleansing sewers and drains;

Cleansing and watering streets or roads;

Fire extinction;

Flushing drains by means of any apparatus discharging automatically;

Public pumps baths or washhouses;

Any trade manufacture or business;

Any bath constructed or fitted so as to be capable of containing when filled or filled up to the overflow or waste pipe (if any) more than eighty gallons.

In *Metropolitan Water Board* v. *London, Brighton and South Coast Rail. Co.*, [1910] 2 K. B. 890, it was held that a supply of water to a railway station was a supply for "railway purposes." The station contained no station master's house, but contained waiting rooms, a porter's room and a booking office; on the up and down platforms were urinals and two waterclosets, one for the passengers and one for the staff, there was also on each platform a tap from which water was drawn for drinking and cleansing the platform.

See also *South Suburban Gas Co.* v. *Metropolitan Water Board*, and *Metropolitan Water Board* v. *Colley's Patents, Ltd.*, cited under s. 8, at p. 690, *ante*.

Rates payable by owners of small houses.

26. Where a house or building or part of a house or building supplied with water is let to monthly or weekly tenants or tenants holding for

Sect. 26. any other period less than a quarter of a year the owner instead of the occupier shall if the Board so determine pay the rate for the supply.

Power to Board to compound rates with owners.

27. Where under the provisions of this Act or any demand or agreement made or entered into thereunder the water rate in respect of the supply of water to any house or building or part of a house or building is payable by the owner of such house or building or part of a house or building and not by the occupier or occupiers and such owner agrees with the Board in writing to pay such rate whether such house or building or part of a house or building be occupied or not it shall be lawful for the Board to make or allow to such owner a deduction or abatement from the amount payable by way of water rate in respect of such house or building or part of a house or building to an amount not exceeding one fifth thereof and in agreeing to make or allow any such deduction or abatement as aforesaid the Board may impose such terms and conditions as to the time and mode of payment of the water rate as they may think fit.

As to charges for supply to Government buildings.

28. If in relation to the charge made or proposed to be made by the Board for a supply of water either for domestic purposes or for purposes other than domestic to any building for the time being in the occupation of His Majesty or of any department of His Majesty's Government for public purposes any question shall arise between the person or department having the control of such building or requiring such supply on the one hand and the Board on the other hand as to whether the Board are for the time being furnishing in like circumstances to any other building within the limits of supply for the like purposes as those in respect of which such question arises a supply of water at a lower rate of charge than the charge so made or proposed to be made by the Board as aforesaid such question shall be determined by an arbitrator to be agreed upon between the parties to such question or failing such agreement to be appointed on the application of either of such parties by the President of the Institution of Civil Engineers and subject to the foregoing provisions of this section the provisions of the Arbitration Act 1889 shall apply to such determination.

Rate for supply to parks and gardens.

29. The rate for the supply by the Board of water for watering any of the parks or gardens situate within the limits of supply and maintained out of the public funds or rates and the roads in any such parks or gardens shall notwithstanding any other provision of this Act be the fixed rate of sixpence per thousand gallons.

Notice of discontinuance.

30. A notice to the Board from a consumer for the discontinuance of a supply of water shall not be of any effect unless it be in writing signed by or on behalf of the consumer and be left at or sent by post to the office of the Board.

Supply for public purposes.

31. The rate for the supply by the Board of water for the purposes mentioned in section 37 of the Waterworks Clauses Act, 1847, shall be the fixed rate of sixpence per thousand gallons and for the purposes of this section the said section 37 shall be construed as extending to all such purposes as are therein mentioned whether the expenses in connection with such purposes be defrayed out of the poor rates or borough rates or out of any other public rate.

Water not to be supplied for other than domestic purposes in certain events.

32. Notwithstanding anything in this Act or any agreement made thereunder the Board shall not be required to afford a supply of water for other than domestic purposes if and so long as any such supply would interfere with the sufficiency of the water required to be supplied for domestic purposes Provided that notwithstanding anything contained in this section the water supply shall not be cut off from any market gardener's premises without giving seven days' previous notice.

Recovery of rates by action.

33. If any person refuses or neglects to pay to the Board any rate or sum due to them under this Act or any agreement made thereunder they may recover the same with costs in any court of competent jurisdiction and their remedy under the present section shall be in addition to their other remedies for the recovery thereof.

Amending s. 15 of Act of 1902.

34. Section 15 of the Act of 1902 shall be amended as follows:—

So much of sub-section (6) of the said section as relates to the reduction of the rates charged for the supply of water below those in force during the quarter ending the twenty-fourth day of June one thousand nine hundred and two shall cease to have effect:

Sub-section (7) of the said section shall be read and have effect as if the words "within three years after the appointed day" had been omitted therefrom.

Saving Act of 1902 and certain regulations.

35. Save as by this Act expressly provided nothing in this Act shall prejudice or interfere with the operation of any of the provisions of the Act of 1902 and nothing in this Act shall prejudice or interfere with any regulation made under the Metropolis Water Act, 1871.

See *Metropolitan Water Board* v. *Mulholland*, cited at p. 628, *ante*.

Preserving savings in Act of 1902.

36. Nothing in this Act shall prejudice or affect any of the savings contained in sections 32 to 36 of the Act of 1902 but such savings shall operate as fully and effectually as if the said sections were in terms re-enacted in this Act.

Saving of special provisions as to Hertfordshire in Act of 1902.

37. Nothing in this Act contained shall be deemed to alter or vary or in any wise prejudice or affect the provisions contained in sections 12, 13 and 14 of the Act of 1902 so far as the same relate or are or may become applicable to any urban or rural district in Hertfordshire but all such provisions notwithstanding any of the provisions of this Act shall operate as fully and effectually as if this Act had not been passed.

Costs of Act.

38. All the costs charges and expenses preliminary to and of and incidental to the preparing applying for obtaining and passing of this Act or otherwise in relation thereto shall be paid by the Board.

Schedules.

The SCHEDULES referred to in the foregoing Act.

FIRST SCHEDULE.

The governor and company of the New River brought from Chadwell and Amwell to London commonly called the New River Company

The East London Waterworks Company.

The Southwark and Vauxhall Water Company.

The company of proprietors of the West Middlesex Waterworks.

The company of proprietors of Lambeth Waterworks.

The governor and company of Chelsea Waterworks.

The Grand Junction Waterworks Company.

The company of proprietors of the Kent Waterworks.

The Staines Reservoirs Joint Committee.

SECOND SCHEDULE.

Name of Act.	Extent of Repeal.
Waterworks Clauses Act, 1847	Sections 35, 36 and 44 so far as applicable to the Board.
Chelsea Waterworks Act, 1852	Sections 60 to 65.
East London Waterworks Act, 1853 ...	Sections 57 to 62, ss. 72 to 76, and ss. 78 to 81.
51 Geo. 3, c. 169 (Grand Junction Waterworks Act, 1811).	Sections 44 and 46.
7 Geo. 4, c. 140 (Grand Junction Waterworks Act, 1826).	Sections 27 and 29.
5 & 6 Will. 4, c. 95 (Grand Junction Waterworks Act, 1835).	Sections 12, 13 and 18.
Grand Junction Waterworks Act, 1852	Section 40 and ss. 46 to 51.
Grand Junction Waterworks Act, 1861	Section 6.
Grand Junction Waterworks Act, 1878	So much of s. 4 as relates to the rates and charges for the supply of water and to the obligations of the Board.
Kent Waterworks Acts Amendment Act, 1811.	Sections 40 and 46.
Kent Waterworks Act, 1864	Sections 28 to 31.
Kent Waterworks Act, 1877	Section 35.
Kent Waterworks Act, 1888	Sections 35 and 36 (except the concluding proviso to s. 36).
Kent Waterworks Act, 1902	Sections 16 and 17 (except the concluding proviso to s. 17).
Lambeth Waterworks Act, 1848 ...	Sections 37 to 40.
New River Company's Act, 1852 ...	Sections 34 to 43.
Southwark and Vauxhall Water Act, 1852.	Section 47 and ss. 53 to 58.
Southwark and Vauxhall Water Act, 1884.	Sections 8 and 20.
West Middlesex Waterworks Act, 1810	Sections 14 and 17.
West Middlesex Waterworks Act, 1852	Section 33 and ss. 39 to 45.
West Middlesex Waterworks Act, 1866	Section 6.

MODEL WATER BILL.*

AS AMENDED, 1910.

Arrangement of Clauses.

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Model clauses relating to sale of plant outside district, and to costs of arbitration, *ante*, pp. 370, 371.

1. The following Acts (so far as the same are applicable for the purposes and are not inconsistent with the provisions of this Act) are hereby incorporated with this Act (namely):— Incorporation of Acts.

(1) The Waterworks Clauses Acts 1847 and 1863 except—

(a) the words "with the consent in writing of the owner or reputed owner of any such house or of the agent of such owner" in clause 44 of the Waterworks Clauses Act 1847:

(b)† Sections 75 to 82 of the Waterworks Clauses Act 1847 with respect to the amount of profit to be received by the undertakers when the waterworks are carried on for their benefit and section 83 relating to accounts.

(2) The Lands Clauses Acts.

(3)

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* It will be observed that the Model Water Bill is framed for the case of a local authority being the undertakers. For that reason the usual clauses with regard to capital, limitation of profits, and auction clauses (where additional capital is sought) are not inserted. For these, see the Model Gas Bill.

† Omit in case of a Company's Bill.

CONSTRUCTION OF WORKS.

Power to make works.

2. Subject to the provisions of this Act the *Corporation* may wholly in the county of and in the lines and situation and upon the lands delineated on the deposited plans and described in the deposited book of reference make and maintain the following works shown on the deposited plans and sections (that is to say):

(a) A reservoir, etc.

(b) A conduit or line of pipes, etc.

In addition to the foregoing works the *Corporation* may upon the said lands make and maintain all such cuts channels catchwaters tunnels adit pipes conduits culverts drains sluices byewashes shafts wells bores water towers overflows waste-water channels gauges filter beds tanks banks walls bridges embankments piers approaches engines machinery and appliances as may be necessary or convenient in connection with or subsidiary to the before-mentioned works or any or either of them, but nothing in this section shall exonerate the *Corporation* from any action indictment or other proceeding for nuisance in the event of any nuisance being caused or permitted by them.

Limits of deviation.

3. In the construction of the works authorised by this Act the *Corporation* may deviate laterally to any extent not exceeding the limits of lateral deviation shown on the deposited plans and where on any road no such limits are shown the boundaries of such road shall be deemed to be such limits and they may also deviate vertically from the levels shown on the deposited sections to any extent not exceeding in the case of the reservoir *three* feet upwards and *five* feet downwards and in the case of other works *three* feet upwards and *ten* feet downwards: Provided as follows (that is to say):—

The *Corporation* shall not construct any embankment or wall of such reservoir of a greater height above the general surface of the ground than that shown on the deposited sections in respect of the corresponding embankment or wall and *three* feet in addition:

Except for the purposes of crossing over a stream no part of the pipes shall be raised above the surface of the ground unless and except so far as is shown on the deposited sections.

Power to take waters.

4. Subject to the provisions of this Act the *Corporation* may collect impound take use divert and appropriate for the purposes of their waterworks the waters of the following streams namely

and all such springs streams and waters as may be intercepted by the works by this Act authorised.

Prior to 1903 this clause was in wider terms as follows:—

> "Subject to the provisions of this Act, the Corporation may collect, impound, take, use, divert, and appropriate for the purposes of their water undertaking, the waters known as and all such springs, streams, and waters, as will or may be intercepted by the works by this Act authorised *or as may be found in on or under any of the lands for the time being belonging to the Corporation*."

As to compensation water.

5.—(1) Until the date of the completion of the said reservoir the *Corporation* may take from the River A. any water they may require subject to the following restrictions:—

(A) They shall place a gauge weir across the said river at or near the proposed intake through an aperture in which gallons of water should be allowed to pass and flow down the river every working day of twenty-four hours:

(B) On any such day during such time as the flow of water in the said river shall be less than at the rate of gallons per day of twenty-four hours the *Corporation* shall not be entitled to draw any water therefrom; but during such time as the flow is in excess of such rate the *Corporation* may take all or such part of the excess as they may require.

(2) After the said reservoir is completed the following provisions shall apply:

(A) The *Corporation* shall during every working day of twenty-four hours discharge or deliver into the River A. at a point therein situate not more than *two* hundred yards below the foot of the embankment of the reservoir not less than gallons of water in a continuous flow:

(B) For the purpose of measuring the quantity of water to be so discharged or delivered into the River A. the *Corporation* shall erect and maintain at a point on the said river below the said reservoir not more than 200 yards from the foot of the embankment thereof a proper and suitable measuring gauge over or through which the said compensation water shall flow, and the same shall be open to the inspection and examination of [the Fishery Board and of] all persons interested therein.

(3) In case of any neglect on the part of the *Corporation* to maintain any gauge in a state of efficiency, and in case of any other neglect by or in consequence of which the said respective quantities of compensation water shall not so flow, the *Corporation* shall for every day on which such neglect occurs forfeit and pay to each of the persons affected thereby [including the said Fishery Board] (who may sue for and recover the same) the sum of five pounds, and shall in addition make compensation for any loss damage or injury sustained by such occupiers or any of them.

(4) If any difference arises between the *Corporation* and the Fishery Board, or any person so interested with respect to the construction or use of any gauge or the state of repair or condition thereof such difference shall be referred to the arbitration of an engineer to be nominated (unless otherwise agreed) on the application of either of them by the Board of Trade.

(5) The provisions of this section shall be accepted and taken by all persons interested as full compensation for all water of the River A. which the Corporation can divert collect impound or appropriate by means of the works by this Act authorised, except in respect of any lands situate between the foot of the said embankment and the said point of discharge of water into the river.

Power to agree as to drainage of lands, etc.

6. The *Corporation* may make and carry into effect agreements with the owners lessees or occupiers of any lands within the drainage area of the reservoirs and works by this Act authorised with reference to the execution by the *Corporation* or such owners lessees or occupiers of such works as may be necessary for the purpose of draining such lands or any of them, or for more effectually collecting conveying and preserving the purity of the waters by this Act authorised to be diverted collected and appropriated by the *Corporation* flowing to upon or from such lands directly or derivatively into such reservoirs and works.

Power to hold lands for protection of waterworks.

7. The *Corporation* may hold any lands acquired by them under the powers of this Act which they may deem necessary for the purpose of protecting their waterworks against pollution fouling and contamination, and so long as such necessity shall continue such lands shall not be deemed to be superfluous lands within the meaning of this Act or the Lands Clauses Acts respectively; but the *Corporation* shall not create or permit a nuisance on any such lands and shall not erect any buildings thereon other than offices and dwellings for persons in their employ and such buildings and works as may be incident to or connected with their water undertaking.

Limited powers of Corporation to abstract water.

8. The *Corporation* shall not construct any works for taking or intercepting water from any lands acquired by them unless the works are authorised by and the lands upon which the same are to be constructed are specified in this or some other Act of Parliament.

Byelaws for preventing pollution of water.

9. *—(1) The *Corporation* may make byelaws for preventing the pollution fouling or contamination of the water which they are authorised to take for the purposes of any of their waterworks and may by such byelaws prescribe the construction maintenance and use of proper drains sewers and works and make provision for the prevention of any act or thing tending to pollution of the water.

(2) The byelaws made under this section shall be in force within the areas from or through which the said waters flow or within so much of those areas as may be defined in the byelaws.

(3) [†The provisions with respect to byelaws to be made by an urban authority contained in sections 182 to 185‡ of the Public Health Act 1875 shall apply to byelaws made by the *Corporation* under this section.]

(4) All byelaws made under this section shall be subject to the approval of the council of every district comprising any part of the area within which it is proposed that they shall be in force Provided that such consent shall not be necessary where in the opinion of the Local Government Board it has been unreasonably withheld.

(5) The *Corporation* shall pay compensation to the owners of and other persons interested in any lands in respect of which byelaws shall be made under the provisions of this section whose legal rights shall be injuriously affected by the restrictions imposed by such byelaws and such compensation shall be settled in default of agreement by arbitration in accordance with the provisions of the Arbitration Act 1889.

Corporation may acquire easements only in certain cases.

10.—(1) The *Corporation* may in lieu of acquiring any lands for the purposes of the works authorised by this Act where the same are intended to be constructed underground acquire such easements only in such lands as they may require for such purposes and may give notice to treat in respect of such easements describing the nature thereof and the provisions of the Lands Clauses Acts shall apply to and in respect of the acquisition of such easements as fully as if the same were lands within the meaning of those Acts.

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* This clause is allowed only where the waterworks of a large town are situate beyond its limits, and it is expedient that the byelaws should be enforced by the authority owning the waterworks.

† This subsection is not required where Clause 22 [*quære* Clause 23] of the Miscellaneous Clauses, at p. 123 of the Model Bill, is inserted in the Bill.

‡ To 186, in the case of a district council or other authority, not being a municipal corporation.

(2) As regards any lands in respect of which the *Corporation* have acquired easements only under the provisions of this section the *Corporation* shall not be required or entitled to fence off or sever such lands from the adjoining lands but the owners or occupiers for the time being shall subject to such easements have the same rights to use and cultivate the said lands at all times as if this Act had not passed.

(3) Provided always that nothing in this section contained shall authorise the *Corporation* to acquire by cumpulsion any such easement in any case in which the owner in his particulars of claim shall require the *Corporation* to acquire the lands in respect of which they have given notice to treat for the acquisition of an easement only and every notice to treat for the acquisition of an easement shall be endorsed with notice of this provision.

This clause was added to the Model Bill in 1908, but it had been in use for many years previously.

SUPPLY OF WATER.

Rates for supply of water for domestic purposes.

11. The *Corporation* shall at the request of the owner or occupier of any dwelling-house or part of a dwelling-house entitled under the provisions of this Act to demand a supply of water for domestic purposes furnish to such owner or occupier a sufficient supply of water for such domestic purposes at rates not exceeding the rates per annum hereinafter specified (that is to say):—

*Where the rateable value of the premises so supplied with water does not exceed pounds the sum of eight shillings and eight pence;

Where such rateable value exceeds pounds and does not exceed pounds the sum of shillings:

Where such rateable value etc. etc. etc.

The rateable value of any such premises as aforesaid shall be ascertained by the valuation list in force at the commencement of the quarter for which the rate accrues or if there is no such list in force by the last rate made for the relief of the poor Provided that where the water rate is chargeable on the rateable value of a part only of any hereditament entered in the valuation list such rateable value shall be a fairly apportioned part of the rateable value of the whole tenement ascertained as aforesaid the apportionment in case of dispute to be ascertained by a court of summary jurisdiction.

In addition to the foregoing charges the *Corporation* may charge in respect of every watercloset beyond the first (for which no additional charge shall be made) on any premises within the limits of this Act a sum not exceeding *five* shillings per annum, and for every fixed bath capable of containing not more than fifty gallons a sum not exceeding *seven* shillings and *sixpence* per annum, and for every fixed bath capable of containing more than fifty gallons such sum as the *Corporation* may think fit, such additional sum to be paid quarterly in advance and to be recoverable in all respects with and as the water rate.

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* Where the rate is a percentage of the rateable value, the following provision is inserted at the end of the clause:—

"Nothing in this section shall entitle the *Corporation* in any case to demand for the water rate for any house or part of a house included in any division of the above scale, a greater sum than they would be entitled to demand if the house or part thereof were of just sufficient rent or value to bring it within the next division of the said scale relating to premises of a higher rent or value whereon a lower rate per centum is chargeable."

Rates payable by owners of small houses.

12. Where a house supplied with water is let to monthly or weekly tenants or tenants holding for any other period less than a quarter of a year, the owner instead of the occupier shall if the *Corporation* so determine pay the rate for the supply; but the rate may be recovered from the occupier and may be deducted by him from the rent from time to time due from him to the owner: Provided that no greater sum shall be recovered at any one time from any such occupier than the amount of rent owing by him or which shall have accrued due from him subsequent to the service upon him of a notice to pay the rate.

Corporation not bound to supply several houses by one pipe.

13. The *Corporation* shall not be bound to supply more than one house by means of the same communication pipe, and they may if they think fit require that a separate pipe be laid from the main pipe into each house supplied by them with water.

Notice of discontinuance.

14. A notice to the *Corporation* from a consumer for the discontinuance of a supply of water shall not be of any effect unless it be in writing signed by or on behalf of the consumer and be left at or sent by post to the office of the *Corporation*.

Byelaw for preventing waste of water.

15.—(1) The *Corporation* may make byelaws for the purpose of preventing waste undue consumption misuse or contamination of the water and may by such byelaws prescribe the size nature materials workmanship and strength and the mode of arrangement connection disconnection alteration and repair of pipes meters cocks ferrules valves soil pans waterclosets baths cisterns and other apparatus (in this section referred to as "water fittings") to be used, and forbid any arrangements and the use of any water fittings which may allow or tend to waste undue consumption misuse erroneous measurement or contamination.

(2) Such byelaws shall apply only in the case of premises to which the *Corporation* are bound to afford and do in fact afford or are prepared on demand to afford a constant supply [*and the provisions with respect to byelaws contained in sections 182 to 185† of the Public Health Act 1875 shall apply to all byelaws so made.]

(3) In case of failure of any person to observe such byelaws as are for the time being in force the *Corporation* may if they think fit after twenty-four hours' notice in writing enter and by and under the direction of their duly authorised officer repair replace or alter any water fittings belonging to or used by such person and not being in accordance with the requirements of

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* The words in brackets are not required where clause 22 of the Miscellaneous Clauses at p. 123 of the Model Bill is inserted in the Bill. [Clause 23, which is doubtless intended to be referred to, is as follows:—"The provisions of ss. 182—185 of the Public Health Act, 1875, so far as they relate to byelaws made by an urban sanitary authority shall apply to all byelaws made by the *Corporation* under the powers of this Act (except byelaws to which the provisions of s. 23 of the Municipal Corporations Act, 1882, are applied by this Act). (Provided that as respects byelaws made under the section of this Act whereof the marginal note is the Secretary of State (*Board of Trade*) shall be substituted for the Local Government Board.")]

† To 186, in case of a district council or other authority, not being a municipal corporation.

In a Company's Bill, section 185 must be varied so as to provide that the byelaws shall be printed and hung up in the office, or an office, of the Company *within the limits of supply*.

such byelaws, and the expense of every such repair replacement or alteration shall be recoverable by the *Corporation* as the water rates in respect of the premises are recoverable.

Supply of water for other than domestic purposes and by measure.

16. The *Corporation* may supply water for other than domestic purposes on such terms and conditions as the *Corporation* think fit, and may supply water by measure either for domestic or other purposes and the moneys payable for the supply of water under this section shall be recoverable in the same manner as water rates: Provided always that no person shall be entitled to a supply of water for other than domestic purposes if such supply would interfere with the sufficiency of the supply of water for domestic purposes.

17. The *Corporation* shall not be bound to supply with water otherwise than by measure any building used by an occupier as a dwelling-house whereof any part is used by the same occupier for any trade or manufacturing purpose for which water is required.

See as to when part of a house is to be considered as used for trade within the meaning of s. 74 (2) of the London Building Act 1894 (57 & 58 Vict. c. ccxiii.). *Dicksee* v. *Hoskins*, [1901] 2 K. B. 660.

18. The price to be charged for a supply of water by measure shall not exceed *one shilling* per thousand gallons.

Power to sell or let meters.

19. The *Corporation* may sell meters and any fittings connected therewith upon and subject to such terms (pecuniary or otherwise) and conditions as they think fit.

The provisions of section 14 of the Waterworks Clauses Act 1863 shall extend to authorise the *Corporation* to let for hire any water fittings to any person supplied by them with water.

Notice to corporation of connecting or disconnecting meters.

20. Before any person connects or disconnects any meter by means of which any of the water of the *Corporation* is intended to be or has been registered he shall give not less than twenty-four hours' notice in writing to the *Corporation* of his intention to do so and all alterations or repairs and the connecting and disconnecting of meters shall be done at his cost and under due superintendence of any officer of or person authorised by the *Corporation* and any person offending against this enactment shall for every such offence be liable to a penalty not exceeding forty shillings.

Injuring meters, etc.

21. Every person who wilfully fraudulently or by culpable negligence injures or suffers to be injured any pipe meter or other instrument for measuring water, or any fittings belonging to the *Corporation*, or who fraudulently alters the index to any meter or other instrument for measuring water, or prevents any meter or other instrument for measuring water from duly registering the quantity of water supplied, or fraudulently abstracts consumes or uses water of the *Corporation*, shall (without prejudice to any other right or remedy for the protection of the *Corporation*) be liable to a fine not exceeding five pounds and the *Corporation* may in addition thereto recover the amount of any damage by them sustained.

And in any case in which any person has wilfully fraudulently or by culpable negligence injured or suffered to be injured any pipe meter instrument or fittings belonging to the *Corporation* or has fraudulently altered the index to any meter or other instrument for measuring water prevented the same from duly registering the quantity of water supplied or has fraudulently abstracted consumed or used water of the *Corporation*, the *Corporation* may also enter upon the premises occupied by the offender and repair such

Sect. 21.

injury and do all such works matters and things as may be necessary for insuring the proper registering by such meter of the quantity of water supplied by means thereof, and the expense of such repair and of all such works matters and things shall be repaid to the *Corporation* by the person so offending and may be recovered by them as water rates are recoverable: The existence of artificial means for causing such injury alteration or prevention or for abstracting consuming or using water of the *Corporation* when such pipe meter instrument or fittings is or are under the custody or control of the consumer shall be primâ facie evidence that such injury alteration prevention abstraction consumption or use as the case may be has been fraudulently knowingly and wilfully caused by the consumer using such pipe meter instrument or fittings.

Power to supply materials.

22.—(1) The *Corporation* may if requested by any person supplied or about to be supplied by them with water furnish to him and repair or alter but shall not manufacture any such pipes valves cocks cisterns bath meters soil-pans waterclosets and other fittings as are required or permitted by their regulations, and may provide all materials and work necessary or proper in that behalf and the reasonable charges of the *Corporation* in providing such materials and executing such work shall be paid by the person requiring the same.

(2) Any fittings let for hire under the provisions of this section shall not be subject to distress or to the landlord's remedy for rent or be liable to be taken in execution under any process of any court or any proceedings in bankruptcy against the persons in whose possession the same may be: Provided that such fittings have upon them respectively a distinguishing metal plate affixed to a conspicuous part thereof or a distinguishing brand or other mark conspicuously impressed or made thereon sufficiently indicating the *Corporation* as the actual owners thereof.

Provided as follows:

(A) The *Corporation* shall so adjust the charges to be made by them for any such fittings or for the fixing repairing or removal thereof as to meet any expenditure by them under the powers of this section in connection therewith (including interest upon any moneys borrowed for those purposes and all sums applied to sinking fund for repayment of moneys so borrowed):

(B) Every sum charged by the *Corporation* in respect of provision of such fittings or repairing the fixing or removal thereof shall be clearly stated in every demand note delivered by the *Corporation* to the consumer:

(C) The total sums expended and received by the *Corporation* in connection with the purposes in this section mentioned in each year (including interest and sinking fund) shall be separately shown in the published accounts of the water undertaking of the *Corporation* for such year.

Power to lay pipes in streets not dedicated to public use.

23. The *Corporation* may, on the application of the owner or occupier of any premises within the *limits of this Act* abutting on or being erected in any street laid out but not dedicated to public use, supply such premises with water, and may lay down take up alter relay or renew in across or along such street such pipes and apparatus as may be requisite or proper for the furnishing such supply.

24. The *Corporation* may enter into and carry into effect agreements with any local authority company or persons for the supply of water beyond the limits of this Act to any such authority company or persons respectively in bulk for any purpose and for such remuneration and on such terms and conditions and for such period as may be agreed upon. Provided that such supply shall not be given except with the consent of any company or person supplying water under Parliamentary authority within the area to be supplied and of the local authority of the district comprising that area, nor if and so long as such supply would interfere with the supply of water for domestic purposes within the limits of this Act.

Sect. 24. Contracts for supplying water in bulk.

25. If at any time after the expiration of *five* years from the commencement of this Act the *Corporation* are not furnishing or prepared on demand to furnish a sufficient supply of water in accordance with the provisions of this Act throughout the district of any local authority within the limits of supply, the local authority or such district may provide a supply in the whole or any part of their district within the limits of supply in accordance with the provisions of the Public Health Act 1875, or any company body or person may apply for an Act of Parliament or a Provisional Order for the purpose of supplying water in any part of such district not sufficiently supplied by the *Corporation* as if in either case *this Act* had not passed.

Power to local authority, etc., to supply water in case company fails to supply.

If any difference shall arise between the *Corporation* and any such local authority company body or person as to the sufficiency of the supply of water in any part of such district such difference shall be settled by an arbitrator to be appointed on the application of either party by the **Local Government Board* [*Board of Trade*].

For model clauses relating to sale of plant outside district, and to costs of arbitration, see *ante*, pp. 370, 371.

THE LIMITED OWNERS RESERVOIRS AND WATER SUPPLY FURTHER FACILITIES ACT, 1877.†

(40 & 41 VICT. c. 31.)

An Act to give further Facilities to Landowners of limited interests in England and Wales and Ireland to charge their Estates with the expenses of constructing Reservoirs for the Storage of Water; and other similar purposes. [2nd August, 1877.]

The preamble to this Act, has been repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

1. This Act may be cited as the Limited Owners Reservoirs and Water Supply Further Facilities Act, 1877.

Short title.

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* The appointment is made by the Local Government Board where the undertakers are a local authority; by the Board of Trade where they are a company.

† See also the District Councils (Water Supply Facilities) Act, 1897 (60 & 61 Vict. c. 44).

Sect. 2.

Extent of Act.

2. This Act shall not extend to Scotland.

This Act has now been extended to Scotland by the Improvement of Land Act, 1899 (62 & 63 Vict. c. 46), s. 2, and First Schedule. As to works of distribution of sewage, see the Public Health (Scotland) Act, 1897 (60 & 61 Vict. c. 38), s. 123.

Act incorporated with 27 & 28 Vict. c. 114.

3. This Act shall be incorporated with the Improvement of Land Act, 1864, and the two Acts shall be read together as one Act.

Certain provisions of 26 & 27 Vict. c. 93, incorporated.

27 & 28 Vict. c. 114.

4. The provisions of the Waterworks Clauses Act, 1863, with respect to the security of the reservoirs constructed by the undertakers are incorporated with this Act; and in that Act, as incorporated with this Act, the expression "the special Act" shall mean and include the Improvement of Land Act, 1864, and this Act; and the expression "the undertakers" shall mean any person who constructs or erects any reservoir or dam under the authority of either of the last-mentioned Acts.

What to be deemed improvements within 27 & 28 Vict. c. 114.

5. The construction or erection of reservoirs or other works of a permanent character for the supply of water to persons residing or engaged in labour on the lands on which such works are situate, or on any other lands settled to the same uses, or for the more convenient or profitable user of such lands, or for the supply of water to any sanitary or other local authority or water company, or to any manufacturer or other person, or for any one or more of such purposes, shall be deemed to be an improvement of land within the meaning of the ninth section of the Improvement of Land Act, 1864, and shall be sanctioned by the commissioners if it can be shown to their satisfaction that such reservoirs or works for the supply of water will for any purpose effect a permanent yearly increase in the value of the lands on which they are situate, or any other lands settled to the same uses, or will be permanently productive of a yearly revenue to the owner of such lands exceeding the yearly amount proposed to be charged thereon; and the construction of any such works shall be deemed to include the purchase by the landowner of any water right or other easement which might otherwise interfere with or prevent the construction of the same or any such supply of water as aforesaid.

In calculating whether the improvement is likely to effect a permanent increase of the yearly value of the land, or be productive of a yearly revenue to the landowner exceeding the yearly amount proposed to be charged thereon, it shall be lawful for the commissioners to take into account the value of any contract, the terms of which have been agreed upon between the landowner and any sanitary or other local authority or water company, or manufacturer or other persons, for the purpose of supplying such authority company person or persons with water, as well as the effect on such value or revenue of any sum expended by the landowner in the construction of the works over and above the sum proposed to be charged upon the land.

Sect. 5.

When the improvement will afford a supply of water to persons residing or engaged in labour on the lands on which the proposed works will be situate, or on any other lands settled to the same uses, the commissioners may, if they think fit, sanction the improvement although it may not be shown that the same will effect a direct yearly increase in the value of the lands, or be productive of a yearly revenue to the owner of the lands exceeding the yearly amount proposed to be charged thereon.

Among the improvements which may be made with capital trust money under s. 25 of the Settled Land Act, 1882 (45 & 46 Vict. c. 38), are "reservoirs, tanks, conduits, watercourses, wells, ponds, shafts, dams, weirs, sluices, and other works and machinery for supply and distribution of water for agricultural, manufacturing, or other purposes, or for domestic or other consumption."

An application under the Settled Land Act, 1882, s. 25 (xiii.) and s. 27, by a tenant for life of a settled estate for the approval of the court of a provisional agreement by the applicant with a projected water company, embodying a scheme for the execution of improvements on, or in connection with, the estate by supplying the same with water, and for authority to the trustees of the settlement to apply certain capital money in their hands for the purchase of shares in the intended company, was granted in *In re Orwell Park Estate*, [1894] W. N. 135. *Cf.* Bythewood and Jarman's Conveyancing, 4th ed., vol. vi., p. 469.

See also the Settled Land Act, 1890, c. 69, s. 13. CHITTY, J., decided that a boiler and hot water pipes were not "additions" within the meaning of that section (*In re Gaskell's Settled Estates*, [1894] 1 Ch. 485).

As regards installation of electric lighting, BUCKLEY, J., decided that the installation of electric lighting (even if exclusive of fittings such as would be ordinarily supplied by a tenant) is not an addition to a building within the sub-section (*In re Clarke's Settlement*, [1902] 2 Ch. 327). See a previous decision by JOYCE, J., on the same subject which was not followed in the case just mentioned (*In re Freake's Settlement*, [1902] 1 Ch. 97). See also in *Re Blagrave's Settled Estates*, [1903] 1 Ch. 560.

Supply of water to local authority, etc.

6. Any landowner charging or proposing to charge his estate with the cost of the construction of reservoirs or other works for the supply of water under this Act may enter into any agreement for the supply of water to any sanitary or other local authority, water company, manufacturer, or other person, for any term not exceeding the number of years during which the cost of the improvement, or any part of it, is made a charge upon the estate: Provided, that every such agreement be approved by the commissioners, and that no premium or benefit in the nature of a premium be reserved thereby by the landowner.

Power to contract for execution of reservoirs, etc.

7. Any company now authorised to contract with landowners in England or Wales, or in Ireland, for the execution of any works for the improvement of land, or to make advances for the purpose of executing or assisting in the execution of such works, may, with the approval of the commissioners, contract with any such landowner for the execution of any reservoirs or works of water supply, the cost of which may by this Act be charged upon the estates of such landowner, and may, with the like approval, make advances for the purpose of executing or assisting in the execution of such reservoirs or works; and for this purpose the execution of any such reservoirs

or works shall be deemed to be an improvement of land within the meaning of any Act of Parliament or articles of association relating to any such company.

Subscriptions to waterworks.

8. Any landowner desiring to charge his estates with subscriptions for the construction of waterworks by a water company, may charge his estates with such moneys on the same terms and conditions as he may under the Improvement of Land Act, 1864, charge his estates with moneys subscribed for the construction of railways or navigable canals; and for this purpose the provisions contained in sections seventy-eight to eighty-nine, both inclusive, of the Improvement of Land Act, 1864, shall apply, mutatis mutandis, to such subscriptions, as if the same had been subscribed for the construction of a railway or navigable canal.

Protection of rights.

9. Nothing in this Act shall be construed to authorise any landowner, or any water company, local authority, person or persons authorised by any landowner, to injuriously affect any reservoir canal river stream or navigation, or the feeders thereof, or the supply quality or fall of water contained in any reservoir canal river stream or navigation, or in the feeders thereof, or any other water rights or easements in cases where any body of persons or person would, if this Act had not passed, have been entitled by law to prevent or be relieved against the injuriously affecting such reservoir canal river stream navigation feeders, or such supply quality or fall of water, or other water rights or easements, unless the landowner, water company, local authority, person or persons first obtain the consent in writing of the body of persons or person so entitled as aforesaid.

Definitions.

10. In this Act the following words and expressions shall have the following meanings; (that is to say,)

"The commissioners" means the inclosure commissioners of England and Wales, or the commissioners of public works in Ireland, as the case may require:

"The Improvement of Land Act, 1864," means the 27th & 28th Vict. c. 114:

"Works for the supply of water" includes wells, pumps, reservoirs, cisterns, ponds, tanks, aqueducts, cuts, sluices, mains, pipes, culverts, machinery, and things for supplying or used in supplying water:

"Water company" means any person or body of persons, corporate or unincorporate, supplying or who may hereafter supply water for his or their own profit:

"Local authority" means any authority having jurisdiction for any public local purpose.

The several words and expressions to which by the Improvement of Land Act, 1864, meanings are assigned, shall in this Act have the same respective meanings as in that Act.

SPECIAL PROVISIONS FOR THE PREVENTION OF WASTE AND MISUSE OF WATER.

Special regulations for the prevention of waste, etc.

THE Waterworks Clauses Acts, 1847 and 1863, contain many enactments for the prevention of waste and the protection of the undertakers' water. These Acts do not of themselves require that the water to be supplied by the undertakers shall be constantly laid on under pressure. Where the special Act or provisional order requires either (1) that the water to be supplied by the undertakers shall be constantly laid on under pressure, or (2) imposes this duty with the qualification that the undertakers shall not be required to supply water in any case at a pressure greater than that to be afforded by gravitation from the reservoir or other authorised work (*e.g.*, a tank) by the Act or order authorised, it is usual for Parliament in private Acts and for the Board of Trade in provisional orders (subject to the confirmation of Parliament) to confer special powers to make regulations subject to confirmation by the Local Government Board. In the case of a provisional order it is always provided "that such regulations shall apply only within the district in which the undertakers are bound to afford, and do in fact afford, a constant supply."

Enactments of the general Acts of 1847 and 1863 for prevention of waste, misuse or contamination of water.

The enactments of the general Acts of 1847 and 1863 above referred to may be here summarised:

Where the water need not be constantly laid on, consumers are, under penalty, to provide and keep in repair a proper cistern, with ball and stop-cock; and a power to cut off is given to the undertakers: Act of 1847, ss. 54—56, *ante*, pp. 498 *et seq.*

Power to undertakers' surveyor to enter houses to examine if there be any waste or misuse of water; power to the undertakers to turn off the water: s. 57, *ante*, p. 499.

Penalty on persons supplied with water for allowing other persons to use the undertakers' water, and penalty on the persons taking such water without agreement: ss. 58, 59, and Act of 1863, s. 20, *ante*, pp. 499, 543.

Penalty for wilfully or carelessly breaking, injuring, or opening any lock, cock, valve, pipe, etc.: s. 60, *ante*, p. 500.

Penalty for fouling water in various ways: s. 61, *ante*, p. 500.

Penalty for fouling with gas washings, etc.: ss. 62—67, *ante*, pp. 504, 505.

Power to cut off water where there is contravention of provisions for prevention of waste, misuse, undue consumption, or contamination of water: Act of 1863, s. 16, *ante*, p. 541.

Penalty for wilfully or negligently suffering any pipe, valve, cock, cistern, bath, soil-pan, watercloset, or other apparatus or receptacle to be out of repair, or to be so used or contrived as that the water is or is likely to be wasted, misused, unduly consumed, or contaminated, or so as to occasion or allow the return of foul air or other noisome or impure matter into any pipe belonging to or connected with the pipes of the undertakers: Act of 1863, s. 17, *ante*, p. 541.

Penalty for application of water contrary to agreement: Act of 1863, s. 18, *ante*, p. 542.

Penalty for affixing or causing or permitting to be affixed any pipe or apparatus to a pipe of the undertakers, or to a communication or service

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pipe, or making any alteration in such service pipe or in any apparatus connected therewith without the consent of the undertakers: Act of 1863, s. 19, *ante*, p. 542.

Penalty for taking or using water without agreement: Act of 1863, s. 20, *ante*, p. 543.

The form of the section now used in special Acts to authorise the making of regulations for the prevention of waste, etc. (where a constant supply is afforded), will be found *ante*, p. 706. The form used in provisional orders made by the Board of Trade under the Gas and Water Works Facilities Acts is in substance the same, though more elaborate.

Regulations under the Metropolis Water Acts.

As regards the metropolis it was provided by the Metropolis Water Act, 1852 (15 & 16 Vict. c. 84), s. 26, that, with the approval of the Board of Trade, "it shall be lawful for any company from time to time to make such regulations as shall be necessary or expedient for the purpose of preventing the waste or misuse of water, and therein, amongst other things, to prescribe the size, nature, and strength of the pipes, cocks, cisterns, and other apparatus to be used, and to interdict any arrangements, and the use of any pipes, cocks, cisterns, or other apparatus which may tend to such waste or misuse as aforesaid." By s. 5 of the Metropolis Water Act, 1871 (34 & 35 Vict. c. 113), the enactment of s. 15 of the Act of 1852 as to constant supply was repealed and by s. 7 constant supply was more stringently provided for. By s. 17 the power to make such regulations was made compulsory, and it was further enacted that the provisions of s. 26 of the Act of 1852 "shall apply also to the preventing of undue consumption or contamination of water." The Act of 1871 contains further enactments as to the confirmation, publication, and evidencing of such regulations. These regulations were accordingly made and were approved by the Board of Trade on August 10th, 1872. By the Public Health Act, 1872, s. 35 (re-enacted by the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 343, and Sched. V., Part III.), the powers and duties of the Board of Trade, under the Metropolis Water Acts, 1852 and 1871, were transferred to the Local Government Board as from January 1st, 1873. By the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 142 (5), it is, "for the removal of doubts," declared that so much of the Public Health Act, 1875, as re-enacts (*inter alia*) s. 35 of the Public Health Act, 1872, extends to "London"—which is defined (s. 141) to mean the administrative county of London. Under s. 18 of the Act of 1871, any company, if it thinks fit, or if requested to do so by the Board of Trade (now by the Local Government Board) may repeal or alter any of the regulations or may make new regulations instead of any of the same. By s. 19, a "metropolitan authority" or any ten consumers may make a request to any company to repeal or alter, or make new regulations, and in case of refusal, the Local Government Board have power to appoint a competent and impartial person of engineering knowledge and experience to report to them. Section 20 authorises penalties for the enforcement of the regulations.

Local Government Board substituted for Board of Trade.

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An attempt was made later by the London County Council, but without success, to obtain some alteration in the regulations. This matter is thus referred to in the report of the Local Government Board for the year 1895—1896 (Parliamentary Paper C. 822, of 1896), at p. clv.: "During the year an inquiry was held by our inspector, Colonel Ducat, R.E., into an application made to us on behalf of the London County Council, to alter, amend, and add to certain of the regulations made by the water companies of London, under the Metropolis Water Act, 1871. The principal amendment desired was one to increase the maximum amount of water to be used as the flush of a watercloset, but, on consideration of Colonel Ducat's report, we decided not to alter the existing regulations in that respect."

Early in 1901 an attempt was made by the metropolitan water companies to substitute new regulations for those which had been authorised in 1872. On the same being submitted for approval to the Local Government Board much opposition thereto arose on the part of the local authorities and others. An inquiry was ordered by the board and was held on February 11th, 1901, and on subsequent days, before a departmental committee (Mr. Perrin, M.I.C.E., chairman). After the inquiry had proceeded for several days the water companies withdrew the proposed regulations. The result is that the regulations of 1872 remain in force.

Here follow the Minute of the Board of Trade approving the Regulations of 1872 (showing the proceedings which took place prior to such approval), and also the Regulations themselves.

MINUTE OF BOARD OF TRADE APPROVING REGULATIONS.

At the Council Chamber, Whitehall, the 10th day of August, 1872.

Present: THE RIGHT HONOURABLE CHICHESTER P. FORTESCUE, M.P.

Section 17.

Whereas it is provided by the Metropolis Water Act, 1871, that every company subject to the provisions of that Act, shall, within six months after the passing of the said Act, make regulations for the purposes for which regulations may be made under the authority of s. 26 of the Metropolis Water Act, 1852, and that the provisions of that section shall apply also to the preventing of undue consumption or contamination of water:

Section 22.

And whereas by the said Metropolis Water Act, 1871, it is further provided that no such regulation shall be of any force or effect unless and until the same be submitted to and confirmed by the Board of Trade, who may institute such inquiry in relation thereto, as they shall think fit, and who, at such inquiry, shall hear the metropolitan authority and the company, if desiring to be heard, and the said Board shall, if they think fit, or if requested, nominate and have present at such inquiry to advise and assist them, a competent and impartial waterworks engineer:

And whereas it is by the said last mentioned Act also provided, that no such regulation shall be confirmed by the Board of Trade, unless notice in that behalf shall have been given by the company to which the same relates, or by such person as the Board of Trade direct, in the London Gazette, and in two daily morning newspapers circulated within the limits of the said Act, one month at least before the inquiry, and that one month at least before any such inquiry is held, a copy of the regulations in question shall be sent by

Regulations such company, or person, to the office of the metropolitan authority, and the same shall for one month be kept open during office hours at the respective offices of the metropolitan authority and of the said company, to the inspection of all persons without fee or reward:

And whereas the metropolitan water companies and the Tottenham Local Board made regulations in accordance with the provisions of the abovenamed Act, and submitted the same to the Board of Trade for confirmation, and duly advertised and deposited the same with the metropolitan authorities:

And whereas the Metropolitan Board of Works and the corporation of the city of London, being metropolitan authorities under the said last-mentioned Act, submitted objections to the said regulations, and it was deemed expedient that an inquiry should be held in relation thereto:

And whereas by the Board of Trade Inquiries Act, 1872, it is provided that wherever in any Act of Parliament it is directed that an inquiry shall be held or instituted by the Board of Trade, the same shall be deemed to have been duly held or instituted, if conducted by any person or persons duly authorised in that behalf by the president of the said Board, by writing under his hand or under the hand of one of the secretaries of the said Board:

And whereas the Board of Trade under the powers conferred upon them as aforesaid, appointed the Right Honourable Lord Methuen, Henry Whatley Tyler, Esquire, late Captain Royal Engineers, and Robert Rawlinson, Esquire, C.E., C.B., to hold an inquiry in relation to the regulations so submitted to them by the companies, and by the Tottenham Local Board:

And whereas the said inquiry has been held, and the said metropolitan authorities, and the companies and the local board have been heard at the inquiry:

And whereas, as the result of such inquiry, it has appeared expedient to the Board of Trade to allow such and so many of the said regulations as are contained in the schedule hereto annexed, with such modifications and alterations as are shown in the said schedule:

SCHEDULE referred to in the above Minute.

REGULATIONS MADE UNDER THE METROPOLIS WATER ACT, 1871.

Place of communication pipe.

1. No "communication pipe" for the conveyance of water from the waterworks of the company into any premises shall hereafter be laid until after the point or place at which such "communication pipe" is proposed to be brought into such premises shall have had the approval of the company.

Weight of lead pipes.

2. No lead pipe shall hereafter be laid or fixed in or about any premises for the conveyance of or in connection with the water supplied by the company (except when and as otherwise authorised by these regulations, or by the company), unless the same shall be of equal thickness throughout, and of at least the weight following, that is to say:

Internal Diameter of Pipe in Inches.	Weight of Pipe in lbs. per lineal Yard.
⅜-inch diameter.	5 lbs. per lineal yard.
½ " "	6 " "
⅝ " "	7½ " "
¾ " "	9 " "
1 " "	12 " "
1¼ " "	16 " "

Regulations

Interior pipes.

3. Every pipe hereafter laid or fixed in the interior of any dwelling-house for the conveyance of, or in connection with, the water of the company, must, unless with the consent of the company, if in contact with the ground, be of lead, but may otherwise be of lead, copper, or wrought iron, at the option of the consumer.

Not more than one communication pipe to each house.

4. No house shall, unless with the permission of the company in writing, be hereafter fitted with more than one "communication pipe."

Every house, with certain exceptions, to have its own communication pipe.

5. Every house supplied with water by the company (except in cases of stand pipes) shall have its own separate "communication pipe." Provided that, as far as is consistent with the special Acts of the company, in the case of a group or block of houses, the water rates of which are paid by one owner, the said owner may, at his option, have one sufficient "communication pipe" for such group or block.

No house to have connection with fittings of adjoining house.

6. No house supplied with water by the company shall have any connection with the pipes or other fittings of any other premises, except in the case of groups or blocks of houses, referred to in the preceding regulation.

Connection to be by ferrule or stop-cock.

7. The connection of every "communication pipe" with any pipe of the company shall hereafter be made by means of a sound and suitable brass screwed ferrule or stop-cock with union, and such ferrule or stop-cock shall be so made as to have a clear area of waterway equal to that of a half-inch pipe. The connection of every "communication pipe" with the pipes of the company shall be made by the company's workmen, and the company shall be paid in advance the reasonable costs and charges of and incident to the making of such connection.

Material and joints of external pipes.

8. Every "communication pipe" and every pipe external to the house and through the external walls thereof, hereafter respectively laid or fixed, in connection with the water of the company, shall be of lead, and every joint thereof shall be of the kind called a "plumbing" or "wiped" joint.

No pipe to be laid through drains, etc.

9. No pipe shall be used for the conveyance of, or in connection with, water supplied by the company, which is laid or fixed through, in, or into any drain, ashpit, sink, or manure hole, or through, in, or into any place where the water conveyed through such pipe may be liable to become fouled, except where such drain, ashpit, sink, or manure hole, or other such place, shall be in the unavoidable course of such pipe, and then in every such case such pipe shall be passed through an exterior cast-iron pipe or jacket of sufficient length and strength, and of such construction as to afford due protection to the water pipe.

Depth of pipes under ground.

10. Every pipe hereafter laid for the conveyance of, or in connection with, water supplied by the company, shall, when laid in open ground, be laid at least two feet six inches below the surface, and shall in every exposed situation be properly protected against the effects of frost.

No connection with rain water receptacle.

11. No pipe for the conveyance of, or in connection with, water supplied by the company, shall communicate with any cistern, butt, or other receptacle used or intended to be used for rain water.

Stop-valve.

12. Every "communication pipe" for the conveyance of water to be supplied by the company into any premises shall have at or near its point of entrance into such premises, and if desired by the consumer within such premises, a sound and suitable stop-valve of the screw-down kind, with an area of waterway not less than that of a half-inch pipe, and not greater than that of the "communication pipe," the size of the valve within these limits being at the option of the consumer.

If placed in the ground such "stop-valve" shall be protected by a proper cover and "guard box."

Character of cisterns and ball taps.

13. Every cistern used in connection with the water supplied by the company shall be made and at all times maintained water-tight, and be properly covered and placed in such a position that it may be inspected and cleansed. Every such existing cistern, if not already provided with an efficient "ball tap," and every such future cistern, shall be provided with a sound and suitable "ball tap" of the valve kind for the inlet of water.

Waste pipes to be removed or converted into warning pipes.

14. No overflow or waste pipe other than a "warning pipe" shall be attached to any cistern supplied with water by the company, and every such overflow or waste pipe existing at the time when these regulations come into operation shall be removed, or at the option of the consumer shall be converted into an efficient "warning pipe," within two calendar months next after the company shall have given to the occupier of, or left at the premises in which such cistern is situate, a notice in writing requiring such alteration to be made.

Arrangement of warning pipes.

15. Every "warning pipe" shall be placed in such a situation as will admit of the discharge of the water from such "warning pipe" being readily ascertained by the officers of the company. And the position of such "warning pipe" shall not be changed without previous notice to and approval by the company.

Buried cisterns prohibited.

16. No cistern buried or excavated in the ground shall be used for the storage or reception of water supplied by the company, unless the use of such cistern shall be allowed in writing by the company.

Butts prohibited.

17 No wooden receptacle without a proper metallic lining shall be hereafter brought into use for the storage of any water supplied by the company.

Ordinary draw tap.

18. No draw tap shall in future be fixed unless the same shall be sound and suitable and of the "screw-down" kind.

Draw taps in connection with stand pipes.

19. Every draw tap in connection with any "stand pipe" or other apparatus outside any dwelling-house in a court or other public place, to supply any group or number of such dwelling-houses, shall be sound and suitable and of the "waste preventer" kind, and be protected as far as possible from injury by frost, theft, or mischief.

Boilers, waterclosets, and urinals to have cisterns.

20. Every boiler, urinal, and watercloset, in which water supplied by the company is used (other than waterclosets in which hand flushing is employed), shall, within three months after these regulations come into operation, be served only through a cistern or service box and without a stool cock, and there shall be no direct communication from the pipes of the company to any boiler, urinal, or watercloset.

Watercloset apparatus.

21. Every watercloset cistern or watercloset service box hereafter fitted or fixed in which water supplied by the company is to be used, shall have an efficient waste preventing apparatus, so constructed as not to be capable of discharging more than two gallons of water at each flush.

Urinal cistern apparatus.

22. Every urinal cistern in which water supplied by the company is used other than public urinal cisterns, or cisterns having attached to them a self-closing apparatus, shall have an efficient "waste-preventing" apparatus, so constructed as not to be capable of discharging more than one gallon of water at each flush.

Watercloset down pipes.

23. Every "down pipe" hereafter fixed for the discharge of water into the pan or basin of any watercloset shall have an internal diameter of not less than one inch and a quarter, and if of lead shall weigh not less than nine pounds to every lineal yard.

Pipes supplying water-closet to communicate with cistern only.

24. No pipe by which water is supplied by the company to any water-closet shall communicate with any part of such watercloset, or with any apparatus connected therewith, except the service cistern thereof.

Bath to be without overflow pipe.

25. No bath supplied with water by the company shall have any overflow waste pipe, except it be so arranged as to act as a "warning pipe."

Bath apparatus.

26. In every bath hereafter fitted or fixed the outlet shall be distinct from, and unconnected with, the inlet or inlets; and the inlet or inlets must be placed so that the orifice or orifices shall be above the highest water level of the bath. The outlet of every such bath shall be provided with a perfectly water-tight plug, valve, or cock.

Alteration of fittings.

27. No alteration shall be made in any fittings in connection with the supply of water by the company without two days' previous notice in writing to the company.

Waterway of fittings.

28. Except with the written consent of the consumer, no cock, furrule, joint, union, valve, or other fitting, in the course of any "communication pipe," shall have a waterway of less area than that of the "communication pipe," so that the waterway from the water in the district pipe or other supply pipe of the company up to and through the stop valve prescribed by Regulation No. 12 shall not in any part be of less area than that of the "communication pipe" itself, which pipe shall not be of less than a half-inch bore in all its course.

Weight of lead pipes having open ends.

29. All lead "warning pipes" and other lead pipes of which the ends are open, so that such pipes cannot remain charged with water, may be of the following minimum weights, that is to say:

½-inch (internal diameter) - - - -	3 lb. per yard.
¾ ,, ,, ,, - - - -	5 ,,
1 ,, ,, ,, - - - -	7 ,,

Definition of "communication pipe."

30. In these regulations the term "communication pipe" shall mean the pipe which extends from the district pipe or other supply pipe of the company up to the "stop-valve," prescribed in the Regulation No. 12.

Penalties.

31. Every person who shall wilfully violate, refuse, or neglect to comply with, or shall wilfully do or cause to be done any act, matter, or thing, in contravention of these regulations, or any part thereof, shall, for every such offence, be liable to a penalty in a sum not exceeding five pounds.

Authorised officer may act for company.

32. Where under the foregoing regulations any act is required or authorised to be done by the company, the same may be done on behalf of the company, by an authorised officer or servant of the company, and where under such regulations any notice is required to be given by the company the same shall be sufficiently authenticated if it be signed by an authorised officer or servant of the company.

Existing fittings.

33. All existing fittings, which shall be sound and efficient, and are not required to be removed or altered under these regulations, shall be deemed to be "prescribed fittings" under the Metropolis Water Act, 1871.

In the fourth edition of this book, three Models of "Regulations," suitable for the case of local authorities or of companies, were given. In the fifth edition these were omitted, as the Local Government Board

Regulations have drawn up a model form of their own, which is inserted below. In framing Regulations, regard must in each case be had to the sections of the local Act giving the authority power to make such Regulations. Penalties may not be provided for in such Regulations, save where the special Act expressly provides for penalties.

LOCAL GOVERNMENT BOARD'S MODEL FORM OF REGULATIONS.*

BYELAWS [*or* REGULATIONS † MADE BY THE‡ FOR PREVENTING WASTE, MISUSE, UNDUE CONSUMPTION OR CONTAMINATION OF THE WATER OF THE SAID COUNCIL [*or* COMPANY].†

INTERPRETATIONS.

1. In these byelaws [*or* regulations] the expression "the council" [*or* company] means the‡ , and the expression "consumer" means a person for the time being supplied with water of the council [*or* company].

AS TO CONSUMER'S PIPES.

2. A consumer shall not, for conveying, delivering, or receiving water of the council [*or* company] use any pipe of galvanised iron.

3. A consumer shall not, for conveying, delivering, or receiving water of the council [*or* company], use any pipe of wrought iron, unless such pipe be of such strength as to be capable of resisting a pressure equal to *three times* the working head of water.

4.§ Except as hereinafter provided, a consumer shall not, for conveying, delivering, or receiving water of the council [*or* company], use any pipe of lead, whereof the weight in proportion to the diameter shall be less than is prescribed by such one of the following rules as may be applicable to such pipe, that is to say:

(a) If the internal diameter of the pipe be half an inch, the weight of the pipe shall be *six pounds* for every lineal yard of the length of the pipe.

(b) If the internal diameter of the pipe be five-eighths of an inch, the weight of the pipe shall be *seven and a half pounds* for every lineal yard of the length of the pipe.

(c) If the internal diameter of the pipe be three-fourths of an inch, the weight of the pipe shall be *nine pounds* for every lineal yard of the length of the pipe.

(d) If the internal diameter of the pipe be one inch, the weight of the pipe shall be *twelve pounds* for every lineal yard of the length of the pipe.

[* It is believed that these regulations are now under revision.—Editor.]

† Strike out the words which are not required throughout.

‡ Here insert the name of the authority or company.

§ NOTE.—In connection with clause No. 4 the Board will require to be informed what is the greatest pressure to which the pipes will be subjected in the lowest part of the district of supply. It should be stated here.

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(e) If the internal diameter of the pipe be one inch and a quarter, the weight of the pipe shall be *sixteen pounds* for every lineal yard of the length of the pipe.

(f) If the internal diameter of the pipe be one inch and a half, the weight of the pipe shall be *twenty pounds* for every lineal yard of the length of the pipe.

5. A consumer shall not cause any bend or curve in any pipe to be so made as to diminish or alter the internal diameter of such pipe in any part.

6. A consumer supplied with water of the council [*or* company] otherwise than by measure shall not cause or suffer such water to be drawn or used through any hose or movable pipe otherwise than in pursuance of a previous agreement with the council [*or* company].

DEPTH OF UNDERGROUND PIPES.

7. A consumer shall not, for conveying, delivering, or receiving water of the council [*or* company], use any pipe which shall be in such position that the pipe throughout some part of its course is beneath the surface of the ground, unless the pipe throughout such part of its course be at a depth of not less than *two feet six inches* from the surface of the ground or pavement immediately above such pipe.

PROTECTION FROM FROST.

8. A consumer shall not for conveying, delivering, or receiving water of the council [*or* company], use any pipe which is not so laid or fixed as to be properly protected from frost.

STOP-COCKS.

9. A consumer shall not for conveying, delivering, or receiving water of the council [*or* company], use any communication or service pipe which is not provided with a suitable stop-cock enclosed in a proper iron box with a hinged cover situated in a convenient and accessible part of the premises.

10. A consumer shall not cause or suffer any stop-cock in connection with any communication or service pipe which is used or intended to be used for conveying, delivering, or receiving water of the council [*or* company], to be fixed or fitted in any exposed situation upon the premises unless such stop-cock be protected by a sufficient iron casing to open by means of a removable key.

AS TO CONSTRUCTION OF DRAW-COCKS, STOP-COCKS, AND BALL-COCKS.

11. A consumer shall not fix, fit, or use, or cause or suffer to be fixed, fitted, or used on or in connection with any pipe or other apparatus necessary for conveying, delivering, receiving or measuring water of the council [*or* company], any draw-cock, stop cock, or ball-cock, which shall not be strong, well made, and of hard brass or gun metal, and in every respect of the best quality.

He shall not so fix, fit, or use, or cause or suffer to be so fixed, fitted, or used, any draw-cock or stop-cock which shall not have a loose screw-down valve with leather face, not liable to be turned round on the seat.

Provided that,—

(a) In the case of a draw-cock or stop-cock used or intended to be used for hot water, he shall not cause or suffer the same to be so fixed, fitted, or used, unless the face of the valve be of a material adapted for use for hot water.

(b) This byelaw [*or* regulation] shall not be deemed to prohibit the fixing, fitting, or use of a draw-cock in connection with a boiler, or of a stop-cock used or intended to be used for hot water which shall be of the kind known as a plug-cock, if in other respects the character and description of such draw-cock or stop-cock shall be such as to satisfy the requirements of this byelaw [*or* regulation].

PROHIBITION OF CARRYING PIPES THROUGH ASH-PITS, ETC.

12. A consumer shall not for conveying, delivering, or receiving water of the council [*or* company], use any pipe which shall be laid or fixed through, in, or into any sewer, drain, ash-pit, manure-hole, or through, in, or into any place where, in the event of the pipe being or becoming unsound, the water conveyed through such pipe would be liable to become fouled or to escape without observation.

Provided that in any case where it may be impracticable to lay or fix such pipe so that no part thereof shall pass through, in, or into any such sewer, drain, ash-pit, manure-hole, or place, this byelaw [*or* regulation] shall not be deemed to prohibit the use of a pipe which shall be so laid or fixed, if such pipe, or so much thereof as may pass through, in, or into such sewer, drain, ash-pit, manure-hole or place shall be carried through an exterior cast-iron tube or box of sufficient length and strength, and of such construction as to afford due protection to the pipe in the interior thereof, and to render any leakage or waste therefrom readily perceptible.

JOINTS.

13. A consumer shall not fix or fit, or cause, or suffer to be fixed or fitted in, or in connection with, a leaden pipe, any joint which is of a kind other than that known as a solder plumbing or "wiped" joint.

CONNECTION WITH RAIN-WATER CISTERN AND OTHER RECEPTACLES PROHIBITED.

14. A consumer shall not cause or suffer any pipe to communicate with any cistern, butt, or other receptacle used or intended to be used for the reception or storage of rain-water, or with any wooden receptacle which shall not be furnished with a proper metallic lining.

DIRECT CONNECTION WITH WATERCLOSET, URINAL, HOT-WATER APPARATUS, ETC., PROHIBITED.

15. A consumer shall not cause or suffer any pipe, not being a flushing or supply pipe leading from a proper service or feed cistern, to be connected with the apparatus of any watercloset, or with any urinal, or with any steam or hot water boiler, or with any trade vessel or apparatus, or to be so laid or fixed or continued as to convey water otherwise than to an accessible cistern, bath, meter, or draw-cock, or other pipe fitting or apparatus by these byelaws [*or* regulations] prescribed or allowed, or otherwise lawfully permitted.

CISTERNS.

16. A consumer shall not fix, fit, or use, or cause or suffer to be fixed, fitted, or used upon any premises a cistern for the reception or storage of water of the council [*or* company], unless such cistern be constructed of slate or iron, or of wood lined with lead or zinc, of a sufficient strength and thickness, and be otherwise such as to satisfy the requirements of the following rules:

(a) Such cistern shall be water-tight and be properly covered and ventilated, and shall be placed in such a position that the interior thereof may be readily inspected and cleansed.

(b) The inlet pipe of such cistern shall be provided with a proper and efficient "ball-tap" or check-valve.

17. A consumer shall not cause or suffer a cistern buried or excavated in the ground to be used for the reception or storage of water of the council [*or* company].

HOT-WATER APPARATUS.

18. A consumer shall not cause or suffer any hot-water apparatus to be connected with a cistern for the reception or storage of water of the council [*or* company] (hereinafter called the storage cistern) unless the size, nature, strength, materials and mode of arrangement and connection of every pipe, cistern, bath, and other apparatus or receptacle connected with or supplied by such hot-water apparatus shall be such as to satisfy the requirements of the following rules:

(a) The point at which water is delivered to such hot-water apparatus, or to any feed cistern connected therewith shall be below the level of the bottom of the storage cistern from which it is supplied, and the pipe by which it is so supplied shall be connected at the bottom of such storage cistern.

(b) Where the mode of arrangement of such hot-water apparatus is that which is known as the "cylinder system,"—

(i.) every cylinder shall be constructed of copper or of wrought iron, of a sufficient strength and thickness; and

(ii.) every hot-water draw-off pipe connected with the cylinder shall be so connected at or above the level of the top of the cylinder.

(c) Every hot-water circulating cistern which is not used or intended or adapted to be used under pressure shall be constructed of wrought iron, of a sufficient strength and thickness.

(d) Every circulating or other pipe which is used or intended or adapted to be used for conveying or delivering hot water, and which is not the best tested iron steam tube, shall be constructed either of lead or copper.

(e) Where any hot-water apparatus is connected with a storage cistern, any pipe which is used or intended or adapted to be used for conveying or delivering cold water to any bath shall be connected with the storage cistern at a point not below one-half the depth of such cistern.

BATHS.

19. A consumer shall not fix, fit, or use or cause or suffer to be fixed, fitted, or used upon any premises any bath in which water of the council [*or* company] may be used, or may be intended to be used, unless the inlet or inlets to such bath be distinct from and unconnected with the outlet thereof, and every inlet pipe be so laid or fixed as to be visible and accessible.

He shall cause every inlet for water to such bath to be above the top water line of the bath, and the outlet of such bath to be provided with a perfectly water-tight plug, valve, or cock.

OVERFLOW PIPES.

20. A consumer shall not cause or suffer any overflow or waste pipe to be attached to any cistern or bath supplied with water of the council [*or* company], unless such pipe be laid or fixed in such a position as to discharge on the outside of the premises, and in such a situation as to afford adequate means of inspection by an officer duly authorised by the council [*or* company] in that behalf.

WATERCLOSETS.

21. A consumer shall not construct, fix, fit, or use or cause or suffer to be constructed, fixed, fitted, or used upon any premises a watercloset in which water of the council [*or* company], is used, or may be intended to be used, unless as regards the construction of such watercloset, and of the apparatus connected therewith, such of the following rules as may be applicable to the circumstances of the case shall be complied with:

(a) A watercloset shall be provided with a proper service cistern, capable of containing not less than *two gallons* nor more than *four gallons* of water when filled to within *three inches* of the top, and such cistern shall be fitted with a proper and efficient ball-cock.

(b) A service cistern provided in connection with a watercloset shall be so arranged as to let down at each flush only the water contained in such cistern, and so contrived that water cannot flow into and out of the cistern at the same time.

(c) A watercloset shall be provided with a proper flushing pipe leading from the service cistern to the basin of such watercloset, and such pipe shall be of an internal diameter not less than *one inch and a quarter*, and if of lead of a weight not less than *nine pounds* for every lineal yard of the length of such pipe.

(d) A watercloset shall be provided with a proper basin and trap, and with all other necessary appliances for the proper application of water to such basin and trap.

(e) In the case of a watercloset fitted with a pull-up flushing apparatus the valves shall not be worked otherwise than by inflexible brass rods, not less than *one quarter of an inch* in diameter.

(f) In the case of a watercloset fitted with a pull-down flushing apparatus, the valves shall not be worked otherwise than by inflexible brass rods, not less than *one quarter of an inch* in diameter, or by a strong pull chain.

URINALS.

22. A consumer shall not construct, fix, fit, or use, or cause or suffer to be constructed, fixed, fitted, or used upon any premises, a urinal in which water of the council [*or* company] is used or may be intended to be used, unless as regards the construction of such urinal, and of the apparatus connected therewith, such of the following rules as may be applicable to the circumstances of the case shall be complied with: **Regulations**

(a) A urinal, not being one of a group or range of urinals, shall be provided with a proper service cistern capable of containing not less than *one gallon* nor more than *two gallons* of water when filled to within *two inches* of the top, and such cistern shall be fitted with a proper and efficient ball-cock.

(b) A service cistern provided in connection with a urinal shall be so arranged as to let down at each flush only the water contained in such cistern, and so contrived that water cannot flow into and out of the cistern at the same time.

METERS.

23. A consumer shall cause every meter through which water of the council [*or* company] is intended to pass, but which is not the property of the council [*or* company], to be so placed as to be properly protected from injury by frost or otherwise.

He shall not cause any such meter to be connected with more than one inlet pipe.

He shall not cause to be attached to the inlet pipe of any such meter any cock, branch, outlet or apparatus, other than a stop-cock provided in pursuance of the byelaw [*or* regulation] in that behalf.

REPEAL*

24. From and after the date of the confirmation of these byelaws [*or* regulations], the byelaws [*or* regulations] for preventing waste, misuse, undue consumption, or contamination of the water of the council [*or* company], which were made by the council [*or* company] on the day of in the year one thousand hundred and , and which were confirmed by the Local Government Board on the day of in the year one thousand hundred and , shall be repealed.

RIVERS POLLUTION PREVENTION ACT, 1876.

(39 & 40 VICT. c. 75.)

An Act for making further Provision for the Prevention of the Pollution of Rivers. [15th August, 1876.]

Preamble repealed by the Statute Law Revision Act, 1894 (57 & 58 *Vict. c.* 56).

1. This Act may be cited for all purposes as the Rivers Pollution Prevention Act, 1876. **Short title of Act.**

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* NOTE.—If this clause is not included in the series submitted to the Local Government Board for approval, it should be stated whether or not there are any byelaws or regulations in force upon the subject. If there are, the Board would wish to see a copy of the byelaws or regulations.

Sect. 1.

NOTE.

By the Rivers Pollution Prevention (Border Councils) Act, 1898 (61 & 62 Vict. c. 34), it is provided that where a river or any tributary thereof is situated partly in England and partly in Scotland, the Local Government Board for England and the Secretary for Scotland may by Provisional Order constitute a joint committee or any other representative body with the powers of a sanitary authority under the Act of 1876. See *post*, p. 755.

Much information on the subject of the various evils for the remedy of which this Act has been passed will be found in the six reports of the Royal Commissioners appointed in 1868 to inquire into the best means of preventing the pollution of rivers, and also in the numerous reports of the Royal Commission appointed in 1898.

Other Acts relating to the pollution [and obstruction] of rivers might be here referred to, viz., s. 17 of the Public Health Act, 1875, which provides that:

"Nothing in this act shall authorize any local authority to make or use any sewer, drain, or outfall for the purpose of conveying sewage or filthy water into any natural stream or watercourse, or into any canal, pond, or lake until such sewage or filthy water is freed from all excrementitious or other foul or noxious matter such as would affect or deteriorate the purity and quality of the water in such stream or watercourse, or in such canal, pond, or lake."

Sect. 68 of the same Act as to gas pollutions has already been set out at p. 192, *ante*. See also s. 21 of the Gas Works Clauses Act, 1847, and other enactments as to gas pollutions, at pp. 191 *et seq.*; ss. 327—333 of the Public Health Act, 1875, set out, *post*, at pp. 914—917; and s. 47 of the Public Health Acts Amendment Act, 1890, *post*, p. 875. Sect. 5 of the Salmon Fishing Act, 1861, provides as follows:

"Every person who causes or knowingly permits to flow, or puts or knowingly permits to be put, into any waters containing salmon, or into any tributaries thereof, any liquid or solid matter to such an extent as to cause the waters to poison or kill fish shall incur the following penalties: (that is to say,)

"(1) Upon the first conviction a penalty not exceeding five pounds:

"(2) Upon the second conviction a penalty not exceeding ten pounds, and a further penalty not exceeding two pounds for every day during which such offence is continued:

"(3) Upon the third or any subsequent conviction, a penalty not exceeding twenty pounds a day for every day during which such offence is continued, commencing from the date of the third conviction:

"But no person shall be subject to the foregoing penalties for any act done in the exercise of any right to which he is by law entitled, if he prove to the satisfaction of the court before whom he is tried that he has used the best practicable means, within a reasonable cost, to render harmless the liquid or solid matter so permitted to flow or to be put into waters; but nothing herein contained shall prevent any person from acquiring a legal right in cases where he would have acquired it if this Act had not passed, or exempt any person from any punishment to which he would otherwise be subject, or legalise any act or default that would but for this Act be deemed to be a nuisance or otherwise be contrary to law."

Sect. 2 of the Sea Fisheries Act, 1888, provides as follows:

"(1) A local fisheries committee for a sea fisheries district may from time to time, subject to such regulations as may be made in that behalf by the Board of Trade, make byelaws, to be observed within their district, for all or any of the following purposes, namely,—

. . . .

"(e) For prohibiting or regulating the deposit or discharge of any solid or liquid substance detrimental to sea fish or sea fishing; and

"(f) For repealing or amending any byelaw made in pursuance of this Act."

Sect. 52 of the Diseases of Animals Act, 1894, provides as follows:

> "If any person, without lawful authority or excuse, proof whereof shall lie on him, does any of the following things, he shall be guilty of an offence against this Act:
>
> * * * * *
>
> "(vii.) If he throws or places, or causes or suffers to be thrown or placed, into or in any river, stream, canal, navigation, or other water, or into or in the sea within three miles of the shore, the carcase of an animal which has died of disease, or been slaughtered as diseased or suspected;
>
> and on a further conviction within a period of twelve months for a second or subsequent offence against the same sub-section of this section he shall be liable, in the discretion of the court, to be imprisoned for any term not exceeding one month, with or without hard labour, in lieu of the fine to which he is liable under this Act."

The Thames Conservancy Act, 1894 (57 & 58 Vict. c. clxxxvii.), also contains provisions for protecting the Thames from pollution (ss. 90—108). See also the Lee Conservancy Act, 1900 (63 & 64 Vict. c. cxvii.), ss. 27—36. See also s. 18, *post*, p. 749.

PART I.

LAW AS TO SOLID MATTERS.

Prohibition as to putting solid matters into streams.

2. Every person who puts or causes to be put or to fall or knowingly permits to be put or to fall or to be carried into any stream, so as either singly or in combination with other similar acts of the same or any other person to interfere with its due flow, or to pollute its waters, the solid refuse of any manufactory, manufacturing process or quarry, or any rubbish or cinders, or any other waste or any putrid solid matter, shall be deemed to have committed an offence against this Act.

In proving interference with the due flow of any stream, or in proving the pollution of any stream, evidence may be given of repeated acts which together cause such interference or pollution, although each act taken by itself may not be sufficient for that purpose.

See s. 20, *post*, p. 750, whereby "person" is defined to include any body of persons, whether corporate or unincorporate; "stream" does not include watercourses at the passing of the Act mainly used as sewers, and emptying directly into the sea; "solid matter" does not include particles of matter in suspension in water; and "polluting" does not include innocuous discoloration.

As to the Mersey and Irwell, and their tributaries, see the Mersey and Irwell Joint Committee Act, 1892 (55 & 56 Vict. c. cxci.), s. 3, *post*, p. 766; and as to the rivers of the West Riding of Yorkshire, see the West Riding of Yorkshire Rivers Act, 1894 (57 & 58 Vict. c. clxvi.), s. 5, and notes to s. 8, *post*, p. 743.

Certain alkali manufacturers in the course of their business discharged a large quantity of water, containing solid matter in suspension, through a drain into a tidal brook which flowed into a navigable river. A conviction under 54 Geo. 3, c. 159, s. 11, was upheld, although injury or obstruction of the navigation of the river was not alleged or shown (*United Alkali Co.*,

Sect. 2.

NOTE.

Ltd. v. *Simpson*, [1894] 2 Q. B. 116). The section under which the last mentioned case was decided prohibited the depositing of rubbish, etc., "in any place or situation on shore where the same shall be liable to be washed into the sea," and the decision turned upon the absence of such words as "so as to tend to the injury or obstruction of the navigation," which words appeared in the immediately preceding paragraph of the section.

See as to the meaning of the word "stream" the notes under s. 20, *post*, p. 750.

A millowner owned weaving sheds, worked by steam power, on the bank of a river, and he had for the purposes of his business, for many years prior to the passing of the Act, lawfully exercised the right of diverting water from the river by means of a goit and dealing with the same in the following manner. The water so diverted being full of substances discharged into the stream from paper manufactories not belonging to the defendant higher up the stream, it had, before it could be used by the defendant for the purposes of his business, to be impounded in a reservoir and allowed to settle. Whilst it was so impounded the substances contained therein sank to the bottom, and after about three days became putrescent in the form of sludge. The water at the top, when thus cleared, was taken from the reservoir and used for condensing and boiler purposes. Once a week the reservoir was cleaned by opening the sluice-gates into the river and allowing the water to flow through the reservoir and out into the river, carrying with it the sludge deposited in the reservoir. The effluent water as it went into the stream through the sluice-gates contained 97·6 per cent. of water and 2·4 per cent. of solid matter:—*Held*, by A. L. SMITH, L.J., and RIGBY, L.J. (affirming the decision of Lord RUSSELL of KILLOWEN, C.J., and WILLS, J.), that the solid matter when it entered the stream from the reservoir was "in suspension in water," within the meaning of s. 20, and therefore not "solid matter" within s. 2 of the Act (*Joint Committee of the River Ribble* v. *Halliwell*; *Same* v. *Shorrock*, [1899] 2 Q. B. 385). A like decision was arrived at by the Divisional Court in *West Riding of Yorkshire Rivers Board* v. *Rawsons* (1903), 67 J. P. 407. There the proceedings were taken under s. 5 of the West Riding of Yorkshire Rivers Act, 1894, which is similar in terms to s. 2 of the Rivers Pollution Prevention Act, 1876, and the manufacturers had, prior to emptying the contents of a dam into a stream, employed men to manipulate the sludge at the bottom of the dam with spades so that it might be carried out by the current from the dam into the stream. It was further held in *Halliwell's Case*, *supra* (by A. L. SMITH, L.J., RIGBY, L.J., and VAUGHAN WILLIAMS, L.J.), that even if the sludge had been "solid matter," s. 17, *post*, p. 749, was a sufficient protection to the defendant. In *West Riding Rivers Board* v. *Goldthorpe* (June 7th, 1898), mud which had settled in a mill dam and was stirred up by the millowners and sent down with the stream was held not to be solid matter. (This case is unreported, but see Haworth on "Rivers Pollution," p. 72.)

In 1886 a proprietor entered into a feu contract, whereby she disponed in feu farm to the vassal "All and whole, the distillery of M., with the right to take water for the use thereof from the burn of R. by pipes." It was also declared "that it shall not be lawful to nor in the power of the said vassal to erect or carry on upon the piece of ground hereby disponed any manufactures or operations which may legally be deemed a nuisance or be dangerous or injurious to the amenity of the neighbourhood, but which declaration shall not apply to the carrying on of the said distillery":—*Held*, in a question with lower riparian proprietors, that the distiller was not entitled to pollute a burn and an adjoining stream into which it ran, by discharges from the distillery (*Seafield* (*Countess Dowager of*) v. *Kemp* (1899), Ct. of Sess. Cas., 1 Fraser, 402).

PART II.

LAW AS TO SEWAGE POLLUTIONS.

Prohibition as to drainage

3. Every person who causes to fall or flow or knowingly permits to fall or flow or to be carried into any stream any solid or liquid sewage matter, shall (subject as in this Act mentioned) be deemed to have committed an offence against this Act.

into streams of sewers.

Where any sewage matter falls or flows or is carried into any stream along a channel used, constructed, or in process of construction at the date of the passing of this Act for the purpose of conveying such sewage matter, the person causing or knowingly permitting the sewage matter so to fall or flow or to be carried shall not be deemed to have committed an offence against this Act if he shows to the satisfaction of the court having cognizance of the case that he is using the best practicable and available means to render harmless the sewage matter so falling or flowing or carried into the stream.

Where the Local Government Board are satisfied after local inquiry that further time ought to be granted to any sanitary authority, which at the date of the passing of this Act is discharging sewage matter into any stream, or permitting it to be so discharged, by any such channel as aforesaid, for the purpose of enabling such authority to adopt the best practicable and available means for rendering harmless such sewage matter, the Local Government Board may by order declare that this section shall not, so far as regards the discharge of sewage matter by such channel, be in operation until the expiration of a period to be limited in the order.

Any order made under this section may be from time to time renewed by the Local Government Board, subject to such conditions, if any, as they may see fit.

A person other than a sanitary authority shall not be guilty of an offence under this section in respect of the passing of sewage matter into a stream along a drain communicating with any sewer belonging to or under the control of any sanitary authority, provided he has the sanction of the sanitary authority for so doing.

See ss. 3, 4 of the Mersey and Irwell Joint Committee Act, 1892, *post*, p. 766, and see West Riding of Yorkshire Rivers Act, 1894, *post*, p. 771, and notes to s. 8, *post*, p. 743.

A sanitary authority is within the definition of "person" given in s. 20. Besides the provision in the text, the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 17, expressly provides that "Nothing in this Act shall authorise any local authority to make or use any sewer, drain, or outfall for the purpose of conveying sewage or filthy water into any natural stream or watercourse, or into any canal, pond, or lake, until such sewage or filthy water is freed from all excrementitious or other foul or noxious matter, such as would affect or deteriorate the purity and quality of the water in such stream or watercourse, or in such canal, pond, or lake." See cases cited *ante*, pp. 425 *et seq*.

For definition of "stream," see s. 20, *post*, p. 750.

Where any local authority have been authorised or required by Act of Parliament to carry any sewage into the sea or any tidal waters, nothing done by such authority in pursuance of such enactment will be deemed an offence against this Act (s. 19).

Proceedings under the section in the text may be taken against a sanitary authority on the part either of some other sanitary authority or of any person or body of persons aggrieved by the commission of the offence (s. 8), subject to the restrictions contained in s. 6.

Sect. 3.

NOTE.

It has been decided by the House of Lords that the duty of a local authority, under s. 15 of the Public Health Act, 1875, to make such sewers as may be necessary for effectually draining their district for the purposes of that Act, cannot be enforced by an action for *mandamus* brought by a private person; the only remedy for neglect of the duty is that given by s. 299 of the Act—a complaint to the Local Government Board (*Pasmore* v. *Oswaldtwistle U. D. C.*, [1898] A. C. 387). See same case in the Court of Appeal, *sub nom. Peebles* v. *Oswaldtwistle U. D. C.*, [1897] 1 Q. B. 625.

A local authority have power to convey into a natural stream within their district surface water from the streets, if free from excrementitious or foul or noxious matter which would affect or deteriorate the purity and quality of the water in the stream; and sand and silt carried down by such surface water are not within the prohibition of ss. 15—17 of the Public Health Act, 1875 (38 & 39 Vict. c. 55) (*Durrant* v. *Branksome U. D. C.*, [1897] 2 Ch. 291).

A sanitary authority was and had been for a long time before the date of the Act sending a large quantity of sewage into a watercourse which joined a larger stream, the water in which above the junction was available for most primary purposes; the combined stream fell into the sea three miles below the junction; the effect of this flow of sewage was that in summer months the greater part of the contents of the combined stream was foully polluted. The combined stream had been for more than forty years carrying more or less polluted water to the sea, but the pollution had been largely increased within the last twenty years:—*Held*, that though the tributary stream was at the date of the Act "mainly used as a sewer," and was, therefore, exempted from the operation of the Act, the stream into which it flowed was not so used, and that therefore the pollution of the latter must be prevented (*Portobello* (*Magistrates of*) v. *Edinburgh* (*Magistrates of*) (1882), 10 Ct. of Sess. Cas., 4th series, 130).

It is no defence that a stream is already polluted, the test being, would the river in its pristine state be appreciably polluted? Nor can a prescriptive right to pollute be set up in defence to proceedings under this Act (*West Riding Rivers Board* v. *Hainsworth*, see Haworth on Rivers Pollution, p. 90; *Midlothian C. C.* v. *Oakbank Oil Co.*, *Midlothian C. C.* v. *Pumpherston* (1903), 41 S. L. R. 181; 67 J. P. 412; *Staffordshire C. C.* v. *Seisdon R. D. C.* (1907), 71 J. P. 185; *Lanark C. C.* v. *Airdrie Magistrates* (1907), 44 S. L. R. 915).

An order having been made under s. 3 that a municipal corporation should abstain from polluting a river, the corporation obtained the necessary powers by a special Act, and had commenced to construct sewerage works for dealing with the matters complained of. It was held that no injunction ought, in the circumstances, to be granted. It was also held that an action would not lie against the corporation for non-feasance or neglect of duty under the Public Health Acts, the plaintiff's remedy being by complaint to the Local Government Board under s. 299 of the Public Health Act, 1875. It was further held that the action would lie against the corporation for damage caused by acts which they had done themselves, and it was further held that notwithstanding s. 1 (a) of the Public Authorities Protection Act, 1893 (see *post*, p. 1062), as the action was instituted within six months of the ceasing of a continuing injury, the plaintiff was entitled to recover damages for a greater period than six months and up to the six years limited by the Statute of Limitations (*Harrington* (*Earl of*) v. *Derby Corporation*, [1905] 1 Ch. 205; 69 J. P. 62).

As to who is a person who "knowingly permits," *cf. High Wycombe Corporation* v. *Thames Conservators* (1898), 78 L. T. 463, a case decided under the Thames Conservancy Act, 1894, s. 92, in which the words are "wilfully causes or suffers." GRANTHAM, J., in that case said, "To establish a 'wilful' suffering, more must be proved than an omission to do something, the evil of which science showed might have been mitigated." This case was acknowledged to be very near the line, and in *Hipkins* v. *Birmingham Gas Co.* (1860), 5 H. & N. 74, a case decided under a private Act in which the words used were "shall not cause or suffer," it was held that "suffer" applied to an involuntary omission to prevent. See also *Millington* v. *Griffiths* (1874), 30 L. T. 65. Here the word "knowingly" was absent. In *Southall Norwood U. D. C.* v. *Middlesex C. C.* (1901), 65 J. P. 215, a case decided under the Middlesex County Council Act, 1898, it was held that the district council were offenders against s. 13 of that Act, which gave the county council power to take proceedings "whenever any sewage or any other offensive or injurious matter is caused or suffered to flow or pass into any stream." In this case the district council had taken over certain sewers and had entered into an agreement with the owner of a margarine factory to take on certain conditions the effluent from the factory into the sewers. The offensive effluent consisted of matter sent into the sewers in breach of the agreement, and it was on the ground, apparently, that the district council ought to have compelled the factory owner to observe the terms of the agreement that they were considered to have "suffered" the offensive matter to flow into the stream. In *Kirkheaton District Local Board* v. *Ainley, Sons, & Co.*, [1892] 2 Q. B. 274, it was held that the plaintiffs who had the control of the sewers and the defendants who sent the sewage into the sewers were equally offenders; the defendants because they caused the flow of sewage, and the plaintiffs because they permitted the flow. See the judgment of BOWEN, L. J., pp. 283, 284. *Cf. R.* v. *Staines Local Board; Thames Conservators* v. *Gravesend Corporation; and Waltham Holy Cross* v. *Lee Conservancy Board*, *post*, p. 732. See also *Yorkshire West Riding C. C.* v. *Holmfirth U. S. A.*, [1894] 2 Q. B. 842; *Butterworth and Roberts* v. *West Riding Rivers Board*, [1909] A. C. 45; and s. 1 of the Rivers Pollution Prevention Act, 1893, *post*, p. 754.

To enable an offender to escape liability under the first proviso to the section he must himself be taking some active steps (see *Lanark C.C.* v. *Airdrie* (1907), 44 S. L. R. 915).

Cases prior to 1893.

Prior to the passing of the Act of 1893, about to be mentioned, the following cases had been decided: A local board, constituted the local authority under the Public Health Act, 1875 (38 & 39 Vict. c. 55), causing a nuisance by any act which, independently of the statute, would have given a cause of action to any person, may be made liable in damages, or be restrained by injunction, unless they can show a justification under the powers of the statute. But if a local board do no act themselves to cause a nuisance, but neglect to perform their duty of providing a satisfactory and healthy system of drainage, it is no ground of action by an individual for damages or an injunction, but the remedy is by prerogative writ of *mandamus;* and *semble*, this jurisdiction, notwithstanding s. 25 of the Judicature Act, 1873 (36 & 37 Vict. c. 66), ought not to be exercised except by the Queen's Bench Division. The defendants were a local board constituted in November, 1875, under the Public Health Act, 1875. The plaintiff complained that for some time before and since the defendants became the sanitary authority, sewage was allowed to fall into a stream passing near his residence so as to pollute it and cause a nuisance to him. He complained to the defendants in May, 1876, and nothing having been done, he brought an action against them in July, 1876, for damages and an injunction:—*Held* (by the Court of Appeal), that, assuming that an actionable nuisance existed, as the defendants had themselves done no act to create or increase it, the plaintiff had no cause of action (*Glossop* v. *Heston and Isleworth L. B.* (1879), 12 Ch. D. 102). A sanitary authority in whom the sewers are vested have only a limited ownership in them; they are not in the same position as to responsibility for fouling a stream as a private individual, because they cannot stop the sewers, on account of the damage to the inhabitants of the neighbourhood. And although, perhaps, the sanitary authority might obtain an injunction to restrain persons from using the sewers who had no right to do so, a landowner complaining of the nuisance cannot bring an action against them for not doing so; because an action cannot be maintained either at law or in equity to compel a person to bring an action for the purpose of restraining a nuisance which he cannot himself prevent. Where a sanitary authority

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have not themselves constructed sewers which are a nuisance, but only permitted them to be used as formerly by the inhabitants, they are not doing an act which can be restrained under the Public Health Acts or the Rivers Pollution Prevention Act. But if they are neglecting their duty in providing a sufficient sanitary scheme for their district the remedy of an aggrieved landowner is by *mandamus* (*Attorney-General* v. *Dorking Union* (1882), 20 Ch. D. 595). *Cf. Isgoed-Jones* v. *Llanrwst U. D. C.* (1910), 27 T. L. R. 133. The Staines Local Board having been indicted for suffering sewage to flow into the Thames, it appeared that the sewers which caused the mischief complained of had existed prior to the time when the system became vested in the local board, and that individuals had acquired by prescription the right to drain into them. The local board had no power to prevent the exercise of such prescriptive rights unless by constructing new sewers equally effectual for the use of the persons deprived under s. 18 of the Public Health Act, 1875 (38 & 39 Vict. c. 55). It was held that by suffering the continuance of the exercise of the prescriptive rights the local board had not "caused" or "suffered" the sewage to flow into the Thames (*R.* v. *Staines L. B.* (1889), 60 L. T. 261; followed in *Thames Conservators* v. *Gravesend Corporation*, [1910] 1 K. B. 442; and *Waltham Holy Cross U. D. C.* v. *Lea Conservancy Board* (1910), 74 J. P. 253). And in *Attorney-General* v. *Clerkenwell Vestry*, [1891] 3 Ch. 527, the cases of *Glossop* v. *Isleworth L. B.* and *Attorney-General* v. *Dorking Union* were followed. *Cf. Southall Norwood U. D. C.* v. *Middlesex C. C.*, *ante*, p. 731.

Amending Act of 1893.

In consequence of the decisions in *Glossop* v. *Heston and Isleworth L. B.* and *Attorney-General* v. *Dorking Union*, *supra*, and the cases in which those decisions were followed, an Act was passed in 1893 (56 & 57 Vict. c. 31) for the purpose of explaining or rather enlarging s. 3. It provides as follows:—

> 1. Where any sewage matter falls or flows or is carried into any stream after passing through or along a channel which is vested in a sanitary authority, the sanitary authority shall, for the purposes of section three of the Rivers Pollution Prevention Act, 1876, be deemed to knowingly permit the sewage matter so to fall, flow, or be carried.
>
> 2. This Act shall be construed as one with the Rivers Pollution Prevention Act, 1876, and the Rivers Pollution Prevention Act, 1876, and this Act may be cited for all purposes as the Rivers Pollution Prevention Acts, 1876 and 1893.

The following case was decided after the Act of 1893 came into force, but on facts arising prior thereto. The defendants, an urban sanitary authority, were charged under the above section with permitting sewage matter to flow into a stream within their district. It appeared that the sewage matter flowed from certain ancient sewers, within the district of and vested in the defendants, which had been constructed and which were used for discharging sewage matter into the stream before the passing of the Act of 1876, and before the defendants were constituted a sanitary authority. The defendants had made certain alterations in these sewers, but had done nothing to increase the pollution of the stream:—*Held*, that there was *primâ facie* evidence that the defendants had "wilfully permitted" sewage matter to flow into the stream, and that the mere fact that they had not materially altered the nature of the sewers, and had done nothing to increase the flow of sewage matter from such sewers into the stream, was not a sufficient answer to proceedings under the Act (*Yorkshire West Riding Council* v. *Holmfirth U. S. A.*, [1894] 2 Q. B. 842).

On a motion for an injunction to restrain a local board from allowing sewage to flow into a brook opposite the plaintiff's house, whereby a nuisance was occasioned, it appeared that the nuisance was in fact caused by an individual not a party to the action, who had passed the sewage of his house into the brook through a pipe, which, by agreement with the defendants, he was only entitled to use for surface or rain water:—*Held*, that although the local board could not be compelled to construct an improved system of drainage except by mandamus; nor to bring an action for an injunction

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against a third party, particularly in cases where the legal right was doubtful; still, where the third party was acting in violation of an agreement entered into with the defendants to pass surface water only through the pipe, and where no special inconvenience would be caused to other neighbours, the plaintiff was entitled to an injunction against the local authority on the ground that they could themselves prevent any nuisance being caused, by stopping up the pipe which was being used in contravention of the agreement, under the powers given them by the Public Health Act, and this notwithstanding that they would be preventing the third party from exercising his right of passing surface water only through the pipe (*Charles* v. *Finchley L. B.* (1883), 23 Ch. D. 767).

The defendants erected waterclosets on their premises, the drains from which they connected with two small natural watercourses, which had become sewers, and were, therefore, vested in the plaintiffs, a local board. Through these sewers the sewage from the waterclosets flowed by natural gravitation into a larger stream. The defendants were entitled as against the plaintiffs to connect the drains from their waterclosets with these sewers under s. 21 of the Public Health Act, 1875 (38 & 39 Vict. c. 55); but the plaintiffs had not sanctioned their so doing. The plaintiffs, under s. 10 of the Rivers Pollution Prevention Act, 1876, applied to a county court for and obtained an order to restrain the defendants from causing the sewage to flow into the stream. On appeal against this order, it appeared to the court that, upon the facts of the case, the plaintiffs were themselves in default in not having made any provision for dealing with the sewage in these sewers, as required by the Public Health Act, 1875:—*Held*, that the making of the order was discretionary, and although the defendants had offended against the Rivers Pollution Prevention Act, 1876, as a matter of discretion, under the circumstances of the case, an order ought not to be made against them at the instance of the plaintiffs, who were themselves offenders against that Act, and were seeking to avoid performance of their duty under the Public Health Act, 1875 (*Kirkheaton District L. B.* v. *Ainley*, [1892] 2 Q. B. 274). *Cf. Waltham Holy Cross U. D. C.* v. *Lea Conservancy Board*, *ante*, p. 732; and see also *Fordom* v. *Parsons*, [1894] 2 Q. B. 780; and *Brown* v. *Dunstable Corporation*, [1899] 2 Ch. 378.

In *Ferrand* v. *Hallas Land and Building Co.*, [1893] 2 Q. B. 135, it appeared that the plaintiff was the owner of land on both sides of the Cullingworth Beck. The defendants erected on their land a row of sixty-nine cottages, and also on their own land they constructed a drain from each cottage and a long intercepting drain or sewer with which each of the cottage drains was connected, the sewer being connected with the stream so that the drainage from the cottages passed down the drains and thence through the sewer into the stream and polluted the water thereof. The drains and the sewer were, as the court held on the evidence, constructed in accordance with plans which were sanctioned by the local authority. The plaintiff took proceedings in the county court to obtain an injunction. The defendants relied on the last paragraph of the section in the text, and alleged that the sewer was not their property; that it vested in the local authority by virtue of s. 13 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), and that by s. 21 of that Act they were entitled to drain their cottages into the sewer; and that s. 3 of the Act of 1876 did not apply to them because they had the sanction of the local authority for doing what they had done, which distinguished their case from *Kirkheaton District L. B.* v. *Ainley*, in which case the defendants had obtained no such sanction. On appeal the Court of Appeal held that a sewer made by a landowner for the sole purpose of draining houses erected by him on his land is not made by him "for his own profit" within the meaning of s. 13, and that, consequently, such a sewer vested in the local authority, and the defendants were thus saved by the last paragraph of the section in the text. See *Minehead L. B.* v. *Luttrell*, [1894] 2 Ch. 178; *Croysdale* v. *Sunbury-on-Thames U. D. C.*, [1898] 2 Ch. 515; *Sykes* v. *Sowerby U. D. C.*, [1900] 1 Q. B. 584.

The Tottenham Local Board and the Wood Green Local Board obtained a private Act sub-dividing and re-arranging their districts, and authorising a joint committee to be appointed, with clerk and engineer, to control the drainage and sewerage. The committee dealt with the sewage of both districts at certain sewerage works which formerly were, and still continued to be, the property of the Tottenham Local Board. The operations of the joint committee at the sewerage works having caused the water of the river Lee to be fouled, the Conservancy Board commenced proceedings against the Tottenham Local Board. It was held that the joint committee, and not the local board, were liable, because the local board having ceased to have the control over the sewers could not have "caused" or "suffered" the outflow into the river (*Lee Conservancy Board* v. *Tottenham L. B.* (1891), 64 L. T. 198).

Sect. 21 of the Public Health Act, 1875, gives a householder an absolute right to connect his drains with a sewer, provided that the regulations prescribed by the local authority as to the manner in which the connections are to be made, and the other conditions of the section, are complied with. See hereon the numerous cases collected in the notes under that section in the last (7th) edition of Lumley's Public Health. It would, however, appear that the section does not give an absolute right to discharge trade effluents into sewers (see the dicta of FLETCHER MOULTON and BUCKLEY, L.JJ., in *Brook* v. *Meltham U. D. C.*, [1908] 2 K. B. 780; and the observations of Lord MACNAGHTEN in *Butterworth and Roberts* v. *West Riding of Yorkshire Rivers Board*, [1909] A. C. 45).

Reference might be made to the cases collected at p. 423, *ante*, as to the common law right to foul water, but under this Act, as has already been mentioned, a prescriptive right to pollute cannot be set up as a defence (p. 730).

In order to maintain a *quia timet* action to restrain an apprehended injury the plaintiff must prove imminent danger of a substantial kind, or that the apprehended injury, if it does come, will be irreparable. The plaintiff was a manufacturer of paper, his mills being situate on the bank of a river, the water of which he used to a large extent in his process of manufacture, for which it was essential that the water should be very pure. The defendants, who were alkali manufacturers, were depositing on a piece of land close to the river, and about one mile and a half higher up than the plaintiff's mills, a large heap of refuse from their works. It was proved that in the course of a few years a liquid of a very noxious character would flow from the heap, and would continue flowing for forty years or more, and that if this liquid should find its way into the river to any appreciable extent the water would be rendered unfit for the plaintiff's manufacture, and his trade would be ruined. The plaintiff did not allege that he had as yet sustained any actual injury. The defendants said that they intended to use all proper precautions to prevent the noxious liquid from getting into the river:—*Held*, that, it being quite possible by the use of due care to prevent the liquid from flowing into the river, and it being also possible that, before it began to flow from the heap, some method of rendering it innocuous might have been discovered, the action could not be maintained, and must be dismissed with costs. But the dismissal was expressly declared to be without prejudice to the right of the plaintiff to bring another action hereafter, in case of actual injury or imminent danger (*Fletcher* v. *Bealey* (1884), 28 Ch. D. 688; *cf. Earl of Ripon* v. *Hobart* (1834), 3 My. & K. 169; *Attorney-General* v. *Corporation of Kingston-on-Thames* (1865), 13 W. R. 888; and *Salvin* v. *North Brancepeth Coal Co.* (1874), L. R. 9 Ch. 705).

See further on the subject of nuisance the cases cited *ante*, pp. 198 *et seq.*

Sewage schemes.

The following answer of the Right Hon. H. H. Fowler (afterwards Lord Wolverhampton), then President of the Local Government Board, to a question put to him on August 10th, 1893, in the House of Commons, will be found to sum up the views of that Board at that date on the subject of the treatment of sewage before being passed into the streams. He said, "It is the invariable practice of the Local Government Board to decline to sanction a loan for any scheme of sewerage or sewage disposal unless it provides that the sewage shall be purified by being passed through land before being discharged into a river or stream to which the Rivers Pollution Prevention Act, 1876, applies. They consider that the requirements of that Act would be contravened unless the sewage is so purified. The Board are fully aware that by means of chemical and mechanical treatment very much may now be done to aid in the purification of the sewage, and they therefore approve of a very much less area of land being provided when the authority propose to adopt such treatment; but they are not of opinion that these means alone, without the passing of the sewage through land, are sufficient. The acquisition of land for the purpose referred to is, no doubt, in some cases attended with difficulty, and it must increase the cost of the scheme. It is also the case that delay has in some cases been occasioned where sanctions to loans have been withheld pending arrangements being made for the acquisition of land. I have considered the question as to instituting an inquiry, but, apart from the difficulty of securing the services on such a committee of men of the necessary scientific and practical knowledge who could give the requisite time for such an inquiry at places at a distance from London, I am not prepared at present to say that such an inquiry is necessary. The inspectors of the Local Government Board, in connection with the inquiries which they have to hold with regard to sewerage schemes, are carefully watching the processes which are proposed in aid of land."

On May 7th, 1898, a Royal Commission was appointed to inquire and report:—

I. (1) What method or methods of treating and disposing of sewage (including any liquid from any factory or manufacturing process) may properly be adopted, consistently with due regard for the requirements of the existing law for the protection of public health, and for the economical and efficient discharge of the duties of local authorities; and

(2) If more than one method may be so adopted, by what rules, in relation to the nature or volume of sewage, or the population to be served, or other varying circumstances or requirements, should the particular method of treatment and disposal to be adopted be determined; and

II. To make any recommendations which may be deemed desirable with reference to the treatment and disposal of sewage.

The commissioners have not yet completed their investigations, but up to August 7th, 1908, they had issued the following reports, etc., which are published as parliamentary papers.

Royal Commission on Sewage Disposal.

I. Interim Report, dated July 12th, 1901. [Cd. 685, 1901.] This report contains the conclusions of the commissioners on the three questions set out below:—

Q. 1. Are some sorts of land unsuitable for the purification of sewage?

Q. 2. Is it practicable to produce by artificial processes alone an effluent which shall not putrefy and so create a nuisance in the stream into which it is discharged?

Q. 3. What means should be adopted for securing the better protection of our rivers?

II. Interim Report. Vol. 2. Evidence. [Cd. 686, 1902.]

III. Interim Report. Vol. 3. Appendices. [Cd. 686—i., 1902.]

IV. Second Report. [Cd. 1178, 1902.]

V. Third Report. 1. Trade Effluents; 2. A New Central Authority. [Cd. 1486, 1903.]

VI. Third Report. Vol. 2. Evidence. [Cd. 1487, 1903.]

VII. Fourth Report. Pollution of Tidal Waters, with special reference to Contamination of Shell Fish.

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Vol. 1. Report. [Cd. 1883, 1904.]

Vol. 2. Evidence. [Cd. 1884, 1904.]

Vol. 3. Reports by Dr. Houston on Bacteriological Investigations. (Correspondence with foreign countries.) [Cd. 1885, 1904.]

Vol. 4. Land Treatment of Sewage.

Part 1. General Report (with diagrams). [Cd. 1886, 1904.]

Part 2. Chemical Report, by Dr. G. McGowan (with diagrams). [Cd. 1886—i., 1904.]

Part 3. Bacteriological Report, by Dr. A. C. Houston (with appendices, plates and diagrams). [Cd. 1886—ii., 1904.]

Part 4. Engineering and Practical Report, by Mr. G. B. Kershaw (with appendices, plates and diagrams). [Cd. 1886—iii., 1904.]

Part 5. Report on methods of chemical analysis as applied to sewage and sewage effluents (with appendices). [Cd. 1886—iv., 1904.]

VIII. Fifth Report. Methods of Treating and Disposing of Sewage [Cd. 4278, 1908.]

The present views of the Board in regard to this matter are to be gathered from the valuable work by Mr. A. E. Wood and Mr. T. R. Johnson on the "Local Government Board's Requirements and Practice," published by Messrs. Butterworth. At p. 756 of that work it is stated:

"Schemes of sewerage which involve the discharge of sewage effluent into non-tidal waters must include provision for the purification of the effluent on an adequate area of land in addition to any particular process which may be adopted for the preliminary treatment of the sewage, unless it can be shown that it is not practicable to acquire at a reasonable cost land which would not be unsuitable for the purpose.

"The precise area of land which should be provided in any case must, of course, depend largely upon the character of the sewage to be dealt with, the nature of the land selected, and the efficiency of the process adopted for the preliminary treatment of the sewage; but, in cases in which it is intended to deal only with domestic sewage and suitable land can be obtained, the Local Government Board require that land should be provided in *at least* the undermentioned proportions, the population specified being that of the area draining to the particular outfall:

"Broad irrigation without previous treatment: One acre to every 150 persons.

"Bacterial process: One acre to every 1,000 persons or every 30,000 gallons.

"Other methods of treatment: One acre to every 1,000 or 2,000 persons, according to system adopted."

PART III.

LAW AS TO MANUFACTURING AND MINING POLLUTIONS.

Prohibition as to drainage into streams from manufactories.

4. Every person who causes to fall or flow or knowingly permits to fall or flow or to be carried into any stream any poisonous, noxious or polluting liquid proceeding from any factory or manufacturing process shall (subject as in this Act mentioned) be deemed to have committed an offence against this Act.

Where any such poisonous, noxious or polluting liquid as aforesaid falls or flows or is carried into any stream along a channel used, constructed, or in process of construction at the date of the passing of this

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Act, or any new channel constructed in substitution thereof, and having its outfall at the same spot, for the purpose of conveying such liquid, the person causing or knowingly permitting the poisonous, noxious or polluting liquid so to fall or flow or to be carried shall not be deemed to have committed an offence against this Act if he shows to the satisfaction of the court having cognizance of the case that he is using the best practicable and reasonably available means to render harmless the poisonous, noxious, or polluting liquid so falling or flowing or carried into the stream.

Proceedings cannot be commenced under this section until the consent of the Local Government Board has been obtained under s. 6, *post*, and due notice given under s. 13, *post*, and the consent of the Board must be obtained before the notice required under s. 13, *post*, can be given (*West Riding of Yorkshire Rivers Board* v. *Robinson*, [1907] 1 K. B. 431).

By s. 7, authorities having control of sewers are to give facilities for enabling manufacturers within their district to carry the liquids proceeding from their factories or manufacturing processes into such sewers, subject to certain conditions. If polluting liquid passes through a sewer into a stream and it does not appear that the local authority have sanctioned the connection with the sewer, the manufacturer discharging the liquid into the sewer commits an offence under the section (*Butterworth* v. *West Riding of Yorkshire Rivers Board*, [1909] A. C. 45). *Semble, per* Lord Macnaghten (*ibid.*), an offence will be committed even though the manufacturer proves that he has obtained facilities for so draining under s. 7. See also *Leeds, etc. Association* v. *West Riding of Yorkshire Rivers Board* (1906), 70 J. P. 480.

See cases cited under preceding sections.

As to the Mersey and Irwell and their tributaries, see the Joint Committee Act, 1892 (55 & 56 Vict. c. cxci.), ss. 5, 6, *post*, p. 767; and as to the rivers of the West Riding, see West Riding of Yorkshire Rivers Act, 1894, *post*, p. 771, and notes to s. 8, *infra*, p. 743.

Ammoniacal liquor passed from certain gasworks into the sewers of a municipal authority and thence to a sewage farm owned by them, and found its way thence into the Wye, and so into the river Thames, but without the knowledge of the local authority. Fines were imposed under the Thames Conservancy Act, 1894 (57 & 58 Vict. c. clxxxvii.), on both the gas company and the local authority, but on appeal by the latter the conviction, so far as they were concerned, was quashed (*High Wycombe Corporation* v. *Thames Conservators* (1898), 78 L. T. 463). *Cf. Southall Norwood U. D. C.* v. *Middlesex C. C.*, cited *ante*, p. 731.

In proceedings under the above section the Court of Session in Scotland decided: (1) that forty years prescription afforded no answer to the complaint; (2) that where the pollution commenced after the passing of the Act the only relevant defence was that in fact there was no pollution; (3) that when the discharge existed at the time of the passing of the Act and is continued by the same channel, the manufacturer must show "that he is using the best practicable and reasonably available means to render harmless" the discharge (*Midlothian C. C.* v. *Pumpherston Oil Co., Ltd., and Oakbank Oil Co., Ltd.* (1903), 6 F. 387).

An offender who relies on the words in the last part of the section must himself be taking some active steps (*Lanark C. C.* v. *Airdrie, ante*, p. 731).

See further the cases cited under the West Riding of Yorkshire Rivers Act, 1894, *post*, p. 771.

In order that a person may take advantage of the condition in s. 4, *supra*, the manufacture must probably be a similar one to that carried on at the date of the passing of the Act, and when the polluting liquid comes from an entirely different manufacturing process, though along the same channel,

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the manufacturer will, perhaps, be unable to claim the benefit of the condition (see *Clarke* v. *The Somersetshire Drainage Commissioners* (1888), 59 L. T. 670, a case decided under the Land Drainage Act, 1861, s. 58).

Sections 12, 14, and 15 of the Act, *post*, p. 748, provide for the giving of certificates as "to the best practicable means" by inspectors of the Local Government Board, as to costs of inquiries instituted by the Board, and as to powers of inspectors of the Board.

Prohibition as to drainage into streams from mines.

5. Every person who causes to fall or flow or knowingly permits to fall or flow or to be carried into any stream any solid matter from any mine in such quantities as to prejudicially interfere with its due flow, or any poisonous, noxious, or polluting solid or liquid matter, proceeding from any mine, other than water in the same condition as that in which it has been drained or raised from such mine, shall be deemed to have committed an offence against this Act, unless in the case of poisonous, noxious, or polluting matter he shows to the satisfaction of the court having cognizance of the case that he is using the best practicable and reasonably available means to render harmless the poisonous, noxious, or polluting matter so falling or flowing or carried into the stream.

Restriction on proceedings under this part of the Act.

6. Unless and until Parliament otherwise provides, the following enactments shall take effect: proceedings shall not be taken against any person under this part of this Act save by a sanitary authority, nor shall any such proceedings be taken without the consent of the Local Government Board: Provided always, that if the sanitary authority, on the application of any person interested alleging an offence to have been committed, shall refuse to take proceedings or apply for the consent by this section provided, the person so interested may apply to the Local Government Board, and if that Board on inquiry is of opinion that the sanitary authority should take proceedings, they may direct the sanitary authority accordingly, who shall thereupon commence proceedings.

The said Board in giving or withholding their consent shall have regard to the industrial interests involved in the case and to the circumstances and requirements of the locality.

The said Board shall not give their consent to proceedings by the sanitary authority of any district which is the seat of any manufacturing industry, unless they are satisfied, after due inquiry, that means for rendering harmless the poisonous, noxious, or polluting liquids proceeding from the processes of such manufactures are reasonably practicable and available under all the circumstances of the case, and that no material injury will be inflicted by such proceedings on the interests of such industry.

Any person within such district as aforesaid, against whom proceedings are proposed to be taken under this part of this Act, shall, notwithstanding any consent of the Local Government Board, be at liberty to object before the sanitary authority to such proceedings being taken, and such authority shall, if required in writing by such person, afford him an opportunity of being heard against such proceedings being taken, so far as the same relate to his works or manufacturing processes. The sanitary authority shall thereupon allow such person to be heard by himself, agents, and witnesses, and after inquiry such authority shall determine, having regard to all the considerations to which the Local Government Board are by this section directed to have regard, whether such proceedings as aforesaid shall or shall not be taken; and where any such sanitary authority has taken proceedings under this Act, it shall not be competent to other sanitary authorities to take proceedings under this Act till the party against whom such proceedings are intended shall have failed in reasonable time to carry out the order of any competent court under this Act.

The consent of the Local Government Board must be obtained every time fresh proceedings are taken, although in respect of a continuance of the same pollution (*Ex parte The Mersey and Irwell Watershed Joint Committee* (1893), 57 J. P. 756). By s. 13 of the Act it is provided that proceedings shall not be taken against an offender until the expiration of two months after written notice has been given. Such notice cannot be given until after the consent of the Local Government Board has been obtained (*West Riding of Yorkshire Rivers Board* v. *Robinson Brothers*, [1907] 1 K. B. 431, overruling *West Riding of Yorkshire Rivers Board* v. *Scarr End Mill Co.* (1901), 65 J. P. 776, and following *Midlothian C. C.* v. *Oakbank Oil Co., Ltd.* (1903), 5 F. 700).

See also notes to s. 8, *post*, p. 743.

PART IV.

Administration of Law.

Sanitary authority to afford facilities for factories draining into sewers.

7. Every sanitary or other local authority having sewers under their control shall give facilities for enabling manufacturers within their district to carry the liquids proceeding from their factories or manufacturing processes into such sewers:

Provided that this section shall not extend to compel any sanitary or other local authority to admit into their sewers any liquid which would prejudicially affect such sewers or the disposal by sale, application to land, or otherwise, of the sewage matter conveyed along such sewers, or which would from its temperature or otherwise be injurious in a sanitary point of view:

Provided also, that no sanitary authority shall be required to give such facilities as aforesaid where the sewers of such authority are only sufficient for the requirements of their district, nor where such facilities would interfere with any order of any court of competent jurisdiction respecting the sewage of such authority.

See notes to preceding sections.

The following note, which is in substance a reproduction of some passages in the article on Rivers Pollution in Vol. 6 of the Encyclopædia of Local Government Law written by the present editor of this work, shows the duty owed by a local authority to manufacturers in respect of trade effluents.

The statutory provisions in regard to the matter are as follows:—

> Sect. 15 of the Public Health Act, 1875, provided as follows:—"Every local authority . . . shall cause to be made such sewers as may be necessary for effectually draining their district for the purposes of this Act."

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> Sect. 21 of the same Act provided that "The owner or occupier of any premises within the district of a local authority shall be entitled to cause his drains to empty into the sewers of that authority on condition of his giving such notice as may be required by that authority of his intention so to do, and of complying with the regulations of that authority in respect of the mode in which the communications between such drains and sewers are to be made, and subject to the control of any person who may be appointed by that authority to superintend the making of such communications."

Next came s. 7 of the Rivers Pollution Prevention Act, 1876, *supra*, and doubts have ever since existed as to what rights the above sections give to manufacturers to discharge trade effluents into sewers, and also as to what duties they impose upon local authorities to provide sewers of sufficient capacity to receive trade effluents.

The effect of an opinion given by the law officers of the Crown to the Local Government Board (see the Third Report of the Royal Commission on Sewage Disposal, at p. xi.) is that a local authority are not generally bound under the Public Health Act, 1875, to provide such sewers as may be necessary to carry off all the trade effluents and liquid refuse coming from manufactories in their district, and that their obligations in this respect are defined by the Rivers Pollution Prevention Act, 1876, s. 7, and are subject to the limitations stated in that section, and, further, that the obligation under the Act of 1875 of providing sewers was confined to the ordinary requirements of the district, that is to say, that the local authorities are only bound to provide for sewage in the ordinary sense of the term, including foul water produced in the ordinary course of domestic management, and surface water.

There are decisions in conflict with the opinion of the law officers. In *Peebles* v. *The Oswaldtwistle U. D. C.*, [1897] 1 Q. B. 384, CHARLES, J., decided that the duty of a local authority under s. 15 of the Public Health Act, 1875, *supra*, extends to the making of sewers sufficient to carry off not merely the ordinary sewage, but also the effluents from the manufactories in the district, provided they are not injurious to health. He also held that the right conferred by s. 21 is not limited to drains conveying ordinary sewage only, but extends to the discharge of trade and manufacturing effluents. The case was taken to the Court of Appeal, [1897] 1 Q. B. 625, and subsequently to the House of Lords (*sub. nom. Passmore* v. *Oswaldtwistle U. D. C.*, [1898] A. C. 387), being there decided on another ground, viz., that the duty of a local authority under s. 15 of the Public Health Act, 1875, to provide sewers is only enforceable by complaint to the Local Government Board under s. 299. In *Eastwood* v. *Honley U. D. C.*, [1900] 1 Ch. 781, BYRNE, J., followed the decision of CHARLES, J., in *Peebles* v. *Oswaldtwistle U. D. C.*, *supra*. His judgment was affirmed ([1901] 1 Ch. 645) on grounds which did not necessitate a decision as to the right of a manufacturer to send trade effluent into a sewer, because the local authority had already allowed the effluent to be introduced into their sewer, and the only questions were whether the sewer had become insufficient, and whether the provisoes following the first part of s. 7 of the Rivers Pollution Prevention Act, 1876, applied.

On the other hand, certain observations made by Lord HALSBURY in *Passmore* v. *Oswaldtwistle U. D. C.*, *supra*, support the opinion of the law officers. In this case it appeared on the pleadings, or at all events was a necessary inference from them, that when the factory was put up in the respondents' district the sewage system was enough for ordinary purposes, and the respondents' counsel argued that in such a case the factory owner could not compel the respondents to remodel their whole drainage in order that it might carry away the factory refuse. The decision of the House of Lords turned upon another point, referred to *supra;* but in his speech Lord HALSBURY, referring to the above argument, at p. 396 of the report in the Law Reports, said : "I confess, however, that I am wholly unable to see the answer to the argument at present, if the facts are what the pleadings appear to admit them to be, because, instead of the Rivers Pollution

Prevention Act having, as Mr. COZENS-HARDY ingeniously argued, reference to a different subject-matter, this appears to me to be the very subject-matter that the Legislature was dealing with there. The preamble of that Act recites that it is expedient to make 'provision for the prevention of the pollution of rivers,' and, having that object before it, the Legislature has obviously intended to look at the system by which the public health is preserved in respect of sewers and drains. What does it there provide? It provides that there shall be an outlet in some form or other for what I may call manufactory refuse; but, contemplating the case which might readily arise where some manufacturer would be very glad to throw upon the rates the necessity of getting rid of his own refuse, it provides also, with reference to that obligation to get rid of the refuse, that where the drainage system of a district is 'only sufficient for the requirements of their district,' there shall not be an obligation to get rid of the refuse of a manufacturer who ought to get rid of the refuse which he is himself creating. That seems to me to be a very intelligible provision, and a very just one; otherwise a manufacturer might come to some very small district, might establish a large manufactory there which would involve, with reference to the law of nuisance, the necessity of getting rid of the refuse created by that manufactory, and there would be no individual obligation upon the person creating it. But if this section in the Public Health Act could be applied in the way it is sought to apply it here, nothing could be easier than for a manufacturer to establish a manufactory for his own profit and throw upon the rates, paid by all the inhabitants, who have no concern with the manufactory at all, the necessity for providing for that great source of expense to the manufacturer of getting rid of his own refuse. It seems to me, therefore, that the Legislature very wisely and prudently provided against such a condition of things as that; and if that condition of things exists here as a fact, as upon the pleadings I think it is admitted that it does, I see no answer to the argument that the section in question would not entitle anybody to call upon the particular district to provide for the extra amount of refuse created by the manufacturer."

Again, in *Brook* v. *Meltham U. D. C.*, [1908] 2 K. B. 780, the Lords Justices expressed disapproval with the decision of CHARLES, J., *supra*; and see the observations of Lord MACNAGHTEN in *Butterworth and Roberts* v. *West Riding of Yorkshire Rivers Board*, [1909] A. C. 45.

The Local Government Board have acted on the view of the law officers of the Crown, for in their Annual Report for 1898-9, at p. cxx., with reference to a complaint by a firm of millowners that a rural district council were in default in providing sewers, they say, "We caused a local inquiry to be held by one of our inspectors with regard to the complaint, and we found that the sewers, though large enough for the conveyance of ordinary domestic sewage, were not of sufficient capacity for the reception of trade refuse. We took the opinion of the law officers of the Crown on the case, and they advised that the district council, under the circumstances, had not made default within the meaning of the Act."

In a Scotch case (*Guthrie, Craig, Peter & Co.* v. *Magistrates of Brechin* (1885), 12 Rettie, 469; (1888), 15 Rettie, 385) it was held that if the capacity of the pipes is sufficient to receive the trade effluent, then the fact that the sewage disposal works are insufficient to deal with the increased effluent is no defence to a claim for facilities under s. 7 of the Act of 1896. This decision has not been followed in England (see *Brook Brothers, Ltd.* v. *Meltham U. D. C.*, [1908] 2 K. B. 780).

In a Scotch case under this section, where the Court found as a fact that the quality of the effluent which the manufacturer proposed to discharge into the sewers was such that although in itself capable of being applied to land in certain quantities and intermittently at certain seasons with beneficial results, it would, if applied as it issued from the sewers, after mixing with the other ordinary sewage, continuously and in the quantities which the manufacturers wanted the local authority to receive, "prejudicially affect" the disposal of the sewage "by application to land," it was held

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that the local authority were not bound to prove that it was scientifically impossible to treat the effluent in question so as to render it innocuous to land, or by a course of experiments to discover and apply some method of treatment which would effect that object, and that upon the facts as found by the court they were entitled to refuse to receive the discharge into their sewers (*Cowie* v. *Dufftown Commissioners* (1901), 3 F. 257).

It may be well to refer to the case of *St. Helen's Chemical Works* v. *St. Helen's Corporation* (1876), 1 Ex. D. 196. There the refuse of chemical works, harmless in itself, passed through drains into the common sewer and generated therein noxious gases. The owners of the works were held liable for the nuisance thereby caused, although the local authority might themselves have contributed to the existence of the nuisance by not properly flushing, cleansing, and trapping the sewer.

The remedy of a manufacturer whose claim is refused may take the form of an action in the county court under s. 10 of the Rivers Pollution Prevention Act, 1876, and the issues to be determined in such an action will be issues of fact (see *Attorney-General* v. *Whitmore*, Times, May 2nd, 1901). A grant of facilities under s. 7 will not be presumed merely because a local authority have passively allowed a connection to be made with a sewer (*Butterworth and Roberts* v. *West Riding of Yorkshire Rivers Board*, [1909] A. C. 45). If a manufacturer turns his effluent into a sewer without permission and it pollutes a stream, he is liable under s. 4. (*ibid.*); and *semble*, he is liable, even if he has permission (*ibid.*, *per* Lord MACNAGHTEN, and *Leeds, etc. Association* v. *West Riding of Yorkshire Rivers Board* (1906), 70 J. P. 480).

In *Eastwood* v. *Honley U. D. C.*, *ante*, p. 740, facilities had been given by the local authority to the plaintiffs for carrying their effluent into a sewer, and it was held that the local authority were not entitled afterwards to cut off the connection with the sewer unless either of the provisoes to s. 7 applied.

In the Third Report (1903) of the Royal Commission on Sewage Disposal the Commissioners recommend (p. xvii.) "that the law should be altered so as to make it the duty of the local authority to provide such sewers as are necessary to carry trade effluents as well as domestic sewage, and that the manufacturer shall be given the right, subject to the observance of certain safeguards, to discharge trade effluents into the sewers of the local authority if he wishes to do so."

Additional legislation exists as to certain classes of manufacturers, viz., owners of alkali works. Sect. 3 (3) of the Alkali, etc. Act, 1906, provides as follows:

> "On the request of the owner of any such work as is mentioned in this section the sanitary authority of the district in which such work is situate shall, at the expense of such owner, provide and maintain a drain or channel for carrying off such liquid as aforesaid produced in such work into the sea or into any river or watercourse into which the liquid can be carried without contravention of the Rivers Pollution Prevention Act, 1876, as amended by any subsequent enactment; and the sanitary authority shall, for the purpose of providing any such drain or channel, have the like powers as they have for providing sewers, whether within or without their district, under the Public Health Act.
>
> "Compensation shall be made to any person for any damage sustained by him by reason of the exercise by a sanitary authority of the powers conferred by this section, and such compensation shall be deemed part of the expenses to be paid by the owner making the request to the sanitary authority under this section."

Before leaving this subject two sections (16 and 17) of the Public Health Act Amendment Act, 1890, should be noticed, for where they have been adopted in the district of any local authority further powers of control over sewers are thereby obtained.

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16.—(1) It shall not be lawful for any person to throw, or suffer to be thrown, or to pass into any sewer of a local authority or any drain communicating therewith, any matter or substance by which the free flow of the sewage or surface or storm water may be interfered with, or by which any such sewer or drain may be injured.

(2) Every person offending against this enactment shall be liable to a penalty not exceeding ten pounds, and to a daily penalty not exceeding twenty shillings.*

17.—(1) Every person who turns or permits to enter into any sewer of a local authority or any drain communicating therewith—

(a) any chemical refuse, or

(b) any waste steam, condensing water, heated water, or other liquid (such water or other liquid being of a higher temperature than one hundred and ten degrees of Fahrenheit),

which, either alone or in combination with the sewage, causes a nuisance or is dangerous or injurious to health, shall be liable to a penalty not exceeding ten pounds and to a daily penalty not exceeding five pounds.

(2) The local authority, by any of their officers, either generally or specially authorised in that behalf in writing, may enter any premises for the purpose of examining whether the provisions of this section are being contravened, and if such entry be refused, any justice, on complaint on oath by such officer, made after reasonable notice in writing of such intended complaint has been given to the person having custody of the premises, may by order under his hand require such person to admit the officer into the premises, and if it be found that any offence under this section has been or is being committed in respect of the premises, the order shall continue in force until the offence shall have ceased or the work necessary to prevent the recurrence thereof shall have been executed.

(3) A person shall not be liable to a penalty for an offence against this section until the local authority have given him notice of the provisions of this section, nor for an offence committed before the expiration of seven days from the service of such notice, provided that the local authority shall not be required to give the same person notice more than once.†

Power of sanitary authority to enforce Act.

8. Every sanitary authority shall, subject to the restrictions in this Act contained, have power to enforce the provisions of this Act in relation to any stream being within or passing through or by any part of their district, and for that purpose to institute proceedings in respect of any offence against this Act which causes interference with the due flow within their district of any such stream, or the pollution within their district of any such stream, against any other sanitary authority or person, whether such offence is committed within or without the district of the first-named sanitary authority.

Any expenses incurred by a sanitary authority in the execution of this Act shall be payable as if they were expenses properly incurred by that authority in the execution of the Public Health Act, 1875.

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* Section 16 is by s. 50 applicable in rural districts.

† Section 17 is by s. 50 applicable in rural districts.

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Proceedings may also, subject to the restrictions in this Act contained, be instituted in respect of any offence against this Act by any person aggrieved by the commission of such offence.

As to the restrictions referred to in the last paragraph, see ss. 6 and 13.

As to places within the jurisdiction of the Lee Conservancy Board, see s. 9.

The Local Government Act, 1888 (51 & 52 Vict. c. 41), provides, by s. 14, as follows:

Power to county council to enforce provisions of 39 & 40 Vict. c. 75.

(1) On and after the appointed day a county council shall have power, in addition to any other authority, to enforce the provisions of the Rivers Pollution Prevention Act, 1876 (subject to the restrictions in that Act contained), in relation to so much of any stream as is situate within, or passes through or by, any part of their county, and for that purpose they shall have the same powers and duties as if they were a sanitary authority within the meaning of that Act, or any other authority having power to enforce the provisions of that Act, and the county were their district.

(2) Any county council shall have power to contribute towards the costs of any prosecution under the said Act instituted by any other county council, or by any urban or rural authority.

Joint committees may be constituted.

(3) The Local Government Board, by provisional order made on the application of the council of any of the counties concerned, may constitute a joint committee or other body representing all the administrative counties through or by which a river, or any specified portion of a river, or any tributary thereof, passes, and may confer on such committee or body all of the powers of a sanitary authority under the Rivers Pollution Prevention Act, 1876, or such of them as may be specified in the order, and the order may contain such provisions respecting the constitution and proceedings of the said committee or body as may seem proper, and may provide for the payment of the expenses of such committee or body by the administrative counties represented by it, and for the audit of the accounts of such committee or body, and their officers.

Mersey and Irwell, and Ribble Orders.

In pursuance of the powers thus given to the Local Government Board to constitute joint committees, such committees have been established for part of the Mersey and Irwell Basin; for parts of the river Ribble and some adjacent streams. It was soon found, however, that the mere appointment of a joint committee was insufficient for dealing with the mischief, and that a considerable amendment of the Act of 1876 was necessary in the case of the rivers referred to. Accordingly, in the following year, the Mersey and Irwell Joint Committee Act, 1892 (55 & 56 Vict. c. cxci.), was passed. This private Act (which is set out at p. 764), proceeds on the preamble that the restrictions contained in the Act of 1876 are such as to preclude effective action by the joint committee; and then proceeds to enact special and wider provisions as regards (1) the prohibition of putting solid matters into rivers; (2) liquid sewage pollution; (3) liquid manufacturing pollution; (4) penalties and procedure. Under the last-mentioned head heavy penalties are imposed, and are made recoverable in a summary manner before a court of summary jurisdiction by the joint committee or by their clerk or other officer authorised in that behalf. An appeal to quarter sessions is allowed.

Mersey and Irwell Act of 1892.

Attempt to apply this legislation to the whole of England.

This private Act relating to the Mersey and Irwell giving promise of proving efficacious in its operation, a public bill was brought into Parliament in 1893 by the Government of the day. It did not, however, pass into law. Its principal object was to improve the law for preventing the pollution of streams, by extending to the whole of England (so far as applicable) similar provisions to those of the Mersey and Irwell Act of 1892. Owing to the numerous amendments made by that Act in the Rivers Pollution Prevention Act of 1876, and to the confusion that would be caused by leaving the Act of 1876 applicable to the sanitary authorities, while introducing a new law for county councils, it was deemed desirable to comprehend in that bill the whole statute law relating to river pollution, and to extend the powers of all local authorities. New clauses and provisoes were added: (1) To prevent the pollution of streams by canals; (2) to qualify justices to act, though they be members of the local authority or ratepayers; (3) to guard against simultaneous prosecutions for the same offences; (4) to empower any local authority to contribute to the expenses of a prosecution by any other authority; (5) to extend the powers of inspecting drains, but with a limitation to reasonable times; (6) to empower the Local Government Board to order, in certain cases, the rating of areas specially benefited. Following the procedure of the Mersey and Irwell Act, which had theretofore been found effective in practice, a court of summary jurisdiction, with appeal to quarter sessions, was substituted for the county court with appeal to the High Court. In the session of 1894 a bill to the like effect was introduced by private members and met with the same fate. Later attempts in the same direction have met with the same fate. In 1902 and 1904 bills were again introduced by Sir Francis Powell.

West Riding of Yorkshire Rivers Board.

A joint committee for the rivers of the West Riding of Yorkshire was also constituted by the Local Government Board under s. 14 (3) of the Local Government Act, 1888, which was afterwards confirmed by Parliament (56 & 57 Vict. c. cxxxii.). It is similar in form to the Mersey and Irwell Order. The Order stated that the purpose for which the committee was formed was the enforcing the provisions of the Rivers Pollution Prevention Act, 1876, in relation to so much of every river or tributary thereof as passes through or by the county of the West Riding of Yorkshire, or through or by the county boroughs of Bradford, Halifax, Huddersfield, Leeds, and Sheffield (Art. 2). By the West Riding of Yorkshire Rivers Act, 1894 (see p. 771), the name of the joint committee was changed to "West Riding of Yorkshire Rivers Board," and they obtained special powers (going somewhat in advance of those in the Mersey and Irwell Act), and placing the enforcement of the law in the hands of the Rivers Board.

In 1898 further provision was made as to Border Counties by the Rivers Pollution Prevention (Border Councils) Act, 1898. See the Act *in extenso, post*, p. 755.

A clause is now frequently inserted in water Acts enabling the local authority under certain conditions to enforce the powers of the Rivers Pollution Prevention Acts, 1876 and 1893, and of the Public Health Acts, for the prevention of the pollution of waters over which the local authority have any powers of user or of any watercourse through which any water may for the time being flow into any such waters upon obtaining the consent of the county council in whose county and of the district council in whose district such pollution occurs. See the INTRODUCTION, at pp. 88, 89.

Power of Lee Conservancy Board to enforce Act.

9. The conservancy board constituted under the Lee Conservancy Act, 1868, shall, within the area of their jurisdiction, have, to the exclusion of any other authority, the powers for enforcing the provisions of this Act which sanitary authorities have under this Act.

The said conservancy board may also enforce the provisions of the Lee Conservancy Act, 1868, under the head or division, "Protection of Water," by application to the county court having jurisdiction in the place in which any offence is committed against those provisions, and such court may by summary order require any person to abstain from the commission of any such offence, and the provisions of this Act with respect to summary orders of county courts and appeal therefrom shall apply accordingly.

See *Lee Conservancy Board* v. *Tottenham L. B.*, *ante*, p. 733, and *Lee Conservancy Board* v. *Leyton U. D. C.* (1906), 70 J. P. 318, a case decided on s. 92 of the Lee Conservancy Act, 1868. See also Lee Conservancy Act, 1900 (63 & 64 Vict. c. cxvii.), ss. 27 *et seq.*, and *Waltham Holy Cross U. D. C.* v. *Lee Conservancy Board* (1910), 74 J. P. 253.

LEGAL PROCEEDINGS. SAVING CLAUSES. DEFINITIONS.

(1) *Legal Proceedings.*

Offences to be restrained by summary order of county court.

10. The county court having jurisdiction in the place where any offence against this Act is committed may by summary order require any person to abstain from the commission of such offence, and where such offence consists in default to perform a duty under this Act may require him to perform such duty in manner in the said order specified; the court may insert in any order such conditions as to time or mode of action as it may think just, and may suspend or rescind any order on such undertaking being given or condition being performed as it may think just, and generally may give such directions for carrying into effect any order as to the court seems meet. Previous to granting such order, the court may, if it think fit, remit to skilled parties to report on the "best practicable and available means" and the nature and cost of the works and apparatus required, who shall in all cases take into consideration the reasonableness of the expense involved in their report.

Any person making default in complying with any requirement of an order of a county court made in pursuance of this section shall pay to the person complaining, or such other person as the court may direct, such sum, not exceeding fifty pounds a day for every day during which he is in default, as the court may order; and such penalty shall be enforced in the same manner as any debt adjudged to be due by the court; moreover, if any person so in default persists in disobeying any requirement of any such order for a period of not less than a month or such other period less than a month as may be prescribed by such order, the court may in addition to any penalty it may impose appoint any person or persons to carry into effect such order; and all expenses incurred by any such person or persons to such amount as may be allowed by the county court shall be deemed to be a debt due from the person in default to the person or persons executing such order, and may be recovered accordingly in the county court.

As to "best practicable and available means," *cf.* the Alkali, etc. Works Regulation Act, 1906 (6 Edw. 7, c. 14), ss. 5, 7, and 27.

See notes to preceding sections.

Where a statute creates an offence and empowers a county court to make an order requiring any person to abstain from committing the offence, and also to impose a penalty upon any person disobeying the order, the county court may, in proceedings taken to obtain an order, grant discovery against the defendant, since discovery in proceedings to obtain an order could not expose the defendant to a penalty, as the penalty can only be imposed in the event of disobedience to the order, if made. So *held* with regard to ss. 3, 10, of the Rivers Pollution Prevention Act, 1876 (*Derby Corporation* v. *Derbyshire C. C.*, [1897] A. C. 550).

Proceedings having been taken in a county court under the Act against the defendants for permitting sewage to flow into a certain river, and neglecting to use the best practicable means to render the sewage harmless, the defendants consented to an order declaring them to have committed the alleged offence and ordering them to execute the necessary sewage works to prevent its continuance. At the date of that order, the defendants were under the belief that the part of the river into which the sewage flowed was non-tidal. Subsequently, the defendants, having been summoned for penalties for disobedience to the order, sought to show that the part of the river into which the sewage flowed was tidal water, and that as there had been no order of the Local Government Board, under s. 20, declaring it to be a stream, they had committed no offence:—*Held*, that the order of the county court was equivalent to a judgment, and that the defendants were estopped from disputing that they had committed the alleged offence, or from contending that the order of the court, in so far as it applied to the *locus in quo*, was without jurisdiction (*River Ribble Joint Committee* v. *Croston U. D. C.*, [1897] 1 Q. B. 251).

An order of the county court is in effect an injunction, and therefore a matter of discretion for the judge (*Kirkheaton District Local Board* v. *Ainley*, [1892] 2 Q. B. 282; *Yorkshire C. C.* v. *Holmfirth*, [1894] 2 Q. B. 842; *Midlothian C. C.* v. *Pumpherston Oil Co.* (1905), 42 S. L. R. 831, etc.). As to the discretion exercisable, see *Staffordshire C. C.* v. *Seisdon R. D. C.* (1907), 71 J. P. 188; *Hainsworth* v. *West Riding of Yorkshire Rivers Board* (1902), 5 L. G. R. 356, n.

In *Peebles* v. *Oswaldtwistle D. C.*, [1897] 1 Q. B. 384, where the plaintiffs asked for a mandamus to compel the defendants to grant facilities under s. 7, CHARLES, J., said, "By s. 10 another sufficient and appropriate remedy for default is provided. The county court is thereby constituted the proper tribunal to enforce the performance of the duty. This is, in my opinion, a complete answer to the claim of the plaintiffs for a mandamus under s. 7."

If a certificate of a Local Government Board inspector has been granted as to the "best practicable and available means" under s. 12, the court must accept it, and cannot remit the matter to skilled parties under this section.

Appeal from county court, and removal of case into High Court of Justice.

11. If either party in any proceedings before the county court under this Act feels aggrieved by the decision of the court in point of law or on the merits, or in respect of the admission or rejection of any evidence, he may appeal from that decision to the High Court of Justice.

The appeal shall be in the form of a special case to be agreed upon by both parties or their attorneys, and, if they cannot agree, to be settled by the judge of the county court upon the application of the parties or their attorneys.

The Court of Appeal may draw any inferences from the facts stated in the case that a jury might draw from facts stated by witnesses.

Subject to the provisions of this section, all the enactments, rules, and orders relating to proceedings in actions in county courts, and to enforcing judgments in county courts and appeals from decisions of the county court judges, and to the conditions of such appeals and to the power of the superior courts on such appeals, shall apply to all proceedings under this Act, and to an appeal from such action, in the same manner as if such action and appeal related to a matter within the ordinary jurisdiction of the court.

Any plaint entered in a county court under this Act may be removed into the High Court of Justice by leave of any judge of the said High Court, if it appears to such judge desirable in the interests of justice that such case should be tried in the first instance in the

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High Court of Justice and not in a county court, and on such terms as to security for and payment of costs, and such other terms (if any) as such judge may think fit.

Notwithstanding the above section, an appeal from a decision of a county court under the Act of 1876 may be brought by notice of motion in accordance with the County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 124; it having been held that the appeal given by s. 120 applies to those cases in which under particular statutes (such as that of 1876) the prescribed mode of appeal is by special case (*Kirkheaton District L. B.* v. *Ainley*, [1892] 2 Q. B. 274).

The High Court will not permit the transfer of an action when the question of fact can be determined locally, and when great expense will be incurred by such transfer (*West Riding of Yorkshire Rivers Board* v. *Ravensthorpe U. D. C.* (1907), 71 J. P. 209).

Certificate of inspector of Local Government Board as to best practicable means.

12. A certificate granted by an inspector of proper qualifications appointed for the purposes of this Act by the Local Government Board to the effect that the means used for rendering harmless any sewage matter or poisonous, noxious, or polluting solid or liquid matter falling or flowing or carried into any stream, are the best or only practicable and available means under the circumstances of the particular case, shall in all courts and in all proceedings under this Act be conclusive evidence of the fact; such certificate shall continue in force for a period to be named therein, not exceeding two years, and at the expiration of that period may be renewed for the like or any less period.

All expenses incurred in or about obtaining a certificate under this section shall be paid by the applicant for the same.

Any person aggrieved by the grant or the withholding of a certificate under this section may appeal to the Local Government Board against the decision of the inspector; and the Board may either confirm, reverse, or modify his decision, and may make such order as to the party or parties by whom the costs of the appeal are to be borne as to the said Board may appear just.

Restriction on proceedings for offences.

13. [*Proceedings shall not be taken under this Act against any person for any offence against the provisions of Parts II. and III. of this Act until the expiration of twelve months after the passing of this Act;*] nor shall proceedings in any case be taken under this Act for any offence against this Act until the expiration of two months after written notice of the intention to take such proceedings has been given to the offender, nor shall proceedings under this Act be taken for any offence against this Act while other proceedings in relation to such offence are pending.

Words italicised repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39).

The obtaining of the consent of the Local Government Board is a condition precedent to the right to serve the notice required by this section (*West Riding of Yorkshire Rivers Board* v. *Robinson Brothers*, [1907] 1 K. B. 341, overruling *West Riding of Yorkshire Rivers Board* v. *Scarr End Mill Co.* (1901), 65 J. P. 776, and following *Midlothian and Linlithgow C. C.* v. *Oakbank Oil Co.* (1903), 67 J. P. 412).

Orders as to costs of inquiries.

14. The Local Government Board may make orders as to the costs incurred by them in relation to inquiries instituted by them under this Act, and as to the parties by whom such costs shall be borne; and every such order and every order for the payment of costs made by the said Board under section twelve of this Act may be made a rule of Her Majesty's High Court of Justice.

Power of inspectors of Local Government Board.

15. Inspectors of the Local Government Board shall, for the purposes of any inquiry directed by the Board under this Act, have in relation to witnesses and their examination, the production of papers and accounts, and the inspection of places and matters required to be inspected, similar powers to those which the inspectors of the said Board have under the Public Health Act, 1875, for the purposes of that Act.

(2) *Saving Clauses.*

Powers of Act cumulative.

16. The powers given by this Act shall not be deemed to prejudice or affect any other rights or powers now existing or vested in any person or persons by Act of Parliament, law, or custom, and such other rights or powers may be exercised in the same manner as if this Act had not passed; and nothing in this Act shall legalise any act or default which would but for this Act be deemed to be a nuisance or otherwise contrary to law: Provided nevertheless, that in any proceedings for enforcing against any person such rights or powers the court before which such proceedings are pending shall take into consideration any certificate granted to such person under this Act.

A prescriptive right to pollute a stream is not included in "other rights or powers" (*Midlothian C. C.* v. *Pumpherston Oil Co.* (1903), 41 S. L. R. 181; *Midlothian C. C.* v. *Oakbank Oil Co.* (1904), 6 F. 388).

See the right to bring actions in respect of pollutions and nuisances given by ss. 69 and 107 of the Public Health Act, 1875.

Saving of rights of impounding and diverting water.

17. This Act shall not apply to or affect the lawful exercise of any rights of impounding or diverting water.

See *Ribble Joint Committee* v. *Halliwell,* cited *ante*, p. 728.

Saving of certain Conservancy Acts.

18. Nothing in or done under this Act shall extend to interfere with, take away, abridge, or prejudicially affect any right, power, authority, jurisdiction, or privilege given by the Thames Conservancy Acts, 1857 and 1864, or by the Thames Navigation Act, 1866, or by the Lee Conservancy Act, 1868, or any Act or Acts extending or amending the said Acts or either of them, or affect any outfall or other works of the Metropolitan Board of Works (although beyond the Metropolis) executed under the Metropolis Management Act, 1855, and the Acts amending or extending the same, or take away, abridge, or prejudicially affect any right, power, authority, jurisdiction, or privilege of the Metropolitan Board of Works.

The Thames Conservancy Acts, 1857 and 1864, and also the Thames Navigation Act, 1866, have been repealed by the Consolidation Act, viz., the Thames Conservancy Act, 1894 (57 & 58 Vict. c. clxxxvii.), which Act now

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defines the rights, powers, etc., of the Thames Conservancy. As to the Lee Conservancy, see also the Lee Conservancy Act, 1900 (63 & 64 Vict. c. cxvii.).

The powers and duties of the Metropolitan Board of Works have been transferred to the London County Council by 51 & 52 Vict. c. 41, s. 40.

Saving of works of certain local authorities.

19. Where any local authority or any urban or rural sanitary authority has been empowered or required by any Act of Parliament to carry any sewage into the sea or any tidal waters, nothing done by such authority in pursuance of such enactment, shall be deemed to be an offence against this Act.

(3) *Definitions.*

Definitions.

20. In this Act, if not inconsistent with the context, the following terms have the meanings hereinafter respectively assigned to them; that is to say,

"Person" includes any body of persons, whether corporate or unincorporate:

"Stream" includes the sea to such extent, and tidal waters, to such point, as may, after local inquiry and on sanitary grounds, be determined by the Local Government Board, by order published in the London Gazette. Save as aforesaid, it includes rivers, streams, canals, lakes, and watercourses, other than watercourses at the passing of this Act mainly used as sewers, and emptying directly into the sea, or tidal waters which have not been determined to be streams within the meaning of this Act by such order as aforesaid:

The question what under a given set of circumstances is a "stream" is one of great difficulty and has been considered in many cases (see *Falconer* v. *South Shields Corporation* (1895), 11 T. L. R. 223; *West Riding of Yorkshire Rivers Board* v. *Gaunt* (1902), 67 J. P. 183; *West Riding of Yorkshire Rivers Board* v. *Preston* (1905), 69 J. P. 1; *Glasgow, Yoker, and Clyde Bank Rail. Co.* v. *Macindoe* (1896), 24 R. 160; *Lanark C. C.* v. *Airdrie Magistrates* (1907), 44 S. L. R. 915). In *Portobello* v. *Edinburgh* (1882), 10 Ct. Sess. Cas., 4th series, 130, the Lord Justice Clerk said, with regard to the meaning of "a watercourse mainly used as a sewer," "I think it means a watercourse which has been converted into a sewer, and although water still runs in it, that that is its main and primary use, and that, in that case—and in that case only—the provisions of the statute are not to apply." In all cases it is a question of fact whether from the nature of the user of the particular channel the channel is or or is not a "stream."

Polluting liquid proceeding from a manufacturing process entered a beck. The county court judge held that the beck was a "stream" within s. 20 of the Rivers Pollution Prevention Act, 1876. It was contended in the Court of Appeal that the beck had become a sewer, and that the right to drain into it was saved by s. 16 of the Act of 1876. On the facts the divisional court were satisfied from the judge's notes that in finding as he did he had considered the question whether it was a sewer. They therefore refused to send the case back for new trial, and dismissed the appeal (*West Riding of Yorkshire Rivers Board* v. *Yorks Indigo, Scarlet and Colour Dyers, Ltd.* (1902), 67 J. P. 80).

As to what is meant by "stream" in its natural sense apart from the definition in this section, see *McNab* v. *Robertson*, [1897] A. C. 134.

"Tidal waters" were defined by GROVE, J., in *Reece* v. *Miller* (1882), 8 Q. B. D. 630, thus: "In order that the river may be tidal at the spot in question it may not be necessary that the water should be salt, but it seems to me that the spot must be one where the tide in the ordinary and regular course of things flows and reflows." But to constitute tidal water it is not essential that there should be horizontal flow (*West Riding of Yorkshire Rivers Board* v. *Tadcaster R. D. C.* (1907), 71 J. P. 429).

See also *Ribble Joint Committee* v. *Croston U. D. C.*, [1897] 1 Q. B. 251.

"Solid matter" shall not include particles of matter in suspension in water:

See the notes under s. 2 for cases decided upon the meaning of "solid matter."

"Polluting" shall not include innocuous discoloration:

"Sanitary authority" means—

In the metropolis, as defined by the Metropolis Management Act, 1855, any local authority acting in the execution of the Nuisances Removal for England Act, 1855, and the Acts amending the same;

By virtue of the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 40 (8), the London County Council became an authority for the enforcement of this Act. See note to s. 8. The Nuisances Removal Act, 1855, was repealed, as regards the metropolis, by the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 142, and by s. 99 of the latter Act sanitary authorities were defined. See now the London Government Act, 1899 (62 & 63 Vict. c. 14), which provides for the formation of borough councils.

Elsewhere in England, any urban or rural sanitary authority acting in the execution of the Public Health Act, 1875.

By the Local Government Act, 1888, s. 14 (1), the county councils also became sanitary authorities for the enforcement of the Act. See note to s. 8. Under the Local Government Act, 1894, urban district councils and rural district councils were created,

PART V.

APPLICATION OF THE ACT TO SCOTLAND.

Modifications of Act in Scotland.

21. In the application of this Act to Scotland the following provisions shall have effect:

(1.) The expression "sanitary authority" shall mean and include the local authority in any parish or burgh in Scotland, acting under the Public Health (Scotland) Act, 1867:

This Act of 1867 has been repealed, and its place taken by the Public Health (Scotland) Act, 1897 (60 & 61 Vict. c. 38). The local authority is now the town council under the Town Councils (Scotland) Act, 1900 (63 & 64 Vict. c. 49), s. 8.

(2.) The expression "London Gazette" shall mean Edinburgh Gazette:

(3.) The expression "the Public Health Act, 1875," shall mean the Public Health (Scotland) Act, 1867, and any Acts amending the same:

See note to sub-s. (1).

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(4.) This Act shall be read and construed as if for the expression "the Local Government Board," wherever it occurs therein, the expression "the Secretary of State" were substituted; and the expression "the Secretary of State" shall mean one of her Majesty's principal Secretaries of State:

(5.) The expression "the county court" shall mean the sheriff of the county, and shall include sheriff substitute; and the expression "plaint entered in a county court" shall mean petition or complaint presented in a sheriff court:

(6.) The expression "the High Court of Justice" shall mean the Court of Session in either division of the Inner House thereof:

(7.) All the jurisdiction, powers, and authorities necessary for the purposes of this Act are hereby conferred on sheriffs and their substitutes:

(8.) The Court of Session may, on the application of the Lord Advocate, on behalf of the Secretary of State, interpone their authority to any order made by the Secretary of State as to the costs incurred by him in relation to inquiries instituted by him under this Act, and as to the parties by whom such costs shall be borne; and may grant decree conform thereto, upon which execution and diligence may proceed in common form:

(9.) An inspector appointed for the purposes of this Act by the Secretary of State shall, for the purposes of any inquiry directed by the Secretary of State under this Act, be entitled by a summons signed by him, to require the attendance of all persons he may think fit to call before him in regard to the matters of the inquiry, and to administer oaths to, and examine upon oath, all such persons, and to require and enforce the production upon oath of all documents, accounts, or papers in anywise relating to such inquiry; and shall also have, in relation to the inspection of places and matters required to be inspected, similar powers to those which sanitary inspectors have under the Public Health (Scotland) Act, 1867.

All powers and duties vested in or imposed on one of her Majesty's principal Secretaries of State in connection with this Act (amongst others) are transferred to, vested in, and imposed on the Secretary for Scotland under s. 5 (1) of the Secretary for Scotland Act, 1885 (48 & 49 Vict. c. 61).

By the Local Government (Scotland) Act, 1889 (52 & 53 Vict. c. 50), s. 55, it is provided as follows:

Power to county council to enforce provisions of 39 & 40 Vict. c. 75.

(1.) On and after the appointed day a county council shall have power, in addition to any other authority, to enforce the provisions of the Rivers Pollution Prevention Act, 1876 (subject to the restrictions in that Act contained), in relation to so much of any stream as is situate within, or passes through or by, any part of their county, and for that purpose they shall have the same powers and duties as if they were a sanitary authority within the meaning of that Act, or any other authority having power to enforce the provisions of that Act, and the county were their district.

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(2.) Any county council shall have power to contribute towards the expenses of any prosecution under the said Act instituted by any other county council or by any sanitary authority.

(3.) The Secretary for Scotland, by provisional order made on the application of the council of any of the counties and burghs concerned, may constitute a joint committee or other body representing all the counties and burghs through or by which a river, or any specified portion of a river, or any tributary thereof, passes, and may confer on such committee or body all the powers of a sanitary authority under the Rivers Pollution Prevention Act, 1876, or such of them as may be specified in the order, and the order may contain such provisions respecting the constitution and proceedings of the said committee or body as may seem proper, and may provide for the payment of the expenses of such committee or body by the counties and burghs represented by it, and for the audit of the accounts of such committee or body, and their officers.

A provisional order made under this section shall be of no effect until it is confirmed by Parliament.

PART VI.

Application of this Act to Ireland.

22. In the application of this Act to Ireland the following provisions shall have effect:

(1.) The expression "sanitary authority" shall mean any urban or rural sanitary authority acting in the execution of the Public Health (Ireland) Act, 1874:

This Act of 1874 was repealed by the Public Health (Ireland) Act, 1878 (41 & 42 Vict. c. 52). By the Public Health (Ireland) Act, 1896 (59 & 60 Vict. c. 54), s. 28, it is provided that: "the expression 'Public Health (Ireland) Act, 1874,' wherever it occurs in the Rivers Pollution Prevention Act, 1876, shall, in the application of the said Act of 1876 to Ireland, be construed as meaning the Public Health (Ireland) Acts, 1878 to 1890."

(2.) The expression "The Public Health Act, 1875," shall mean the Public Health (Ireland) Act, 1874:

See note to sub-s. (1).

(3.) The expression "the Local Government Board" shall mean the Local Government Board for Ireland:

(4.) The expression "the county court" shall mean the civil bill court:

(5.) The expression "plaint entered in a county court" shall mean civil bill process:

(6.) The expression "the High Court of Justice" shall mean any of the superior courts of common law in Dublin, or any judge thereof to whom appeals may be brought from the decision of a civil bill court:

(7.) The expression "the judge of the county court" shall mean the chairman of quarter sessions and judge of the civil bill court:

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(8.) The expression "the London Gazette" shall mean the Dublin Gazette:

(9.) All the jurisdiction, powers, and authorities necessary for the purposes of this Act are hereby conferred upon the civil bill courts and superior courts, and the judges of the same respectively:

(10.) All penalties, when recovered by or on behalf, or at the instance of or in any proceeding instituted by any sanitary authority, or any officer of such authority, shall be paid to such sanitary authority, and by the same applied in aid of their expenses under the Sanitary Acts; and save as aforesaid all such penalties shall be applied in manner directed by the Fines Act (Ireland), 1851, and any Act amending the same.

RIVERS POLLUTION PREVENTION ACT, 1893.

(56 & 57 VICT. C. 31.)

An Act to explain the Rivers Pollution Prevention Act, 1876.

[27th July, 1893.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Explanation of 39 & 40 Vict. c. 75, s. 3, as to drainage into streams.

1. Where any sewage matter falls or flows or is carried into any stream after passing through or along a channel which is vested in a sanitary authority, the sanitary authority shall, for the purposes of section three of the Rivers Pollution Prevention Act, 1876, be deemed to knowingly permit the sewage matter so to fall, flow, or be carried.

The reasons which led to the passing of this Act are stated *ante,* p. 731.

Construction and short title.

2. This Act shall be construed as one with the Rivers Pollution Prevention Act, 1876; and the Rivers Pollution Prevention Act, 1876, and this Act may be cited for all purposes as the Rivers Pollution Prevention Acts, 1876 and 1893.

RIVERS POLLUTION PREVENTION (BORDER COUNCILS) ACT, 1898.

(61 & 62 VICT. c. 34.)

An Act to enable the County Councils on either side of the Border to act together for the Prevention of the Pollution of Rivers.

[2nd August, 1898.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Provision for enforcement of 39 & 40 Vict. c. 75, in border counties.

1. Where a river or any tributary thereof is situate partly in England and partly in Scotland, the Local Government Board for England and the Secretary for Scotland, by Provisional Order made on the application of the council of any of the counties concerned, may together constitute a joint committee or other body representing all or any of the counties through or by which such river or any specified portion or tributary thereof passes, and may confer on such committee or body all of the powers of a sanitary authority under the Rivers Pollution Prevention Act, 1876, or such of them as may be specified in the order; and the order may contain such provisions respecting the constitution and proceedings of the said committee or body as may seem proper, and may provide for the payment of the expenses of such committee or body by the counties represented by it, and for the audit of the accounts of such committee or body and their officers.

39 & 40 Vict. c. 75.

Application of 38 & 39 Vict. c. 55, s. 297.

2. Section two hundred and ninety-seven of the Public Health Act, 1875 (which relates to the making of Provisional Orders by the Local Government Board) shall apply for the purposes of this Act as if the same was herein re-enacted, and in terms made applicable thereto, but with the substitution for the words "Local Government Board" of the words "Local Government Board for England and Secretary for Scotland."

Interpretation of "county."

52 & 53 Vict. c. 50.

3. In this Act the term "county" means, as regards England, an administrative county, and includes a county borough, and means, as regards Scotland, a county or burgh as defined by the Local Government (Scotland) Act, 1889.

Short title.

4. This Act may be cited as the Rivers Pollution Prevention (Border Councils) Act, 1898.

LOCAL GOVERNMENT BOARD'S PROVISIONAL ORDERS CONFIRMATION (No. 10) ACT, 1891.

(54 & 55 VICT. c. LXXI.)

An Act to confirm certain Provisional Orders of the Local Government Board for constituting Joint Committees to enforce the Provisions of the Rivers Pollution Prevention Act, 1876, *in relation to parts of the Rivers Irwell, Mersey, and Ribble.* [3rd July, 1891.]

WHEREAS the Local Government Board have made the Provisional Orders set forth in the schedule hereto, under the provisions of the Local Government Act, 1888:

51 & 52 Vict. c. 41.

And whereas it is requisite that the said Orders should be confirmed by Parliament:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same as follows:

Orders in schedule confirmed.

1. The Orders as amended and set out in the schedule hereto shall be and the same are hereby confirmed, and all the provisions thereof shall have full validity and force.

Short title.

2. This Act may be cited as the Local Government Board's Provisional Orders Confirmation (No. 10) Act, 1891.

SCHEDULE.

RIVERS MERSEY AND IRWELL.

Provisional Order for constituting a Joint Committee under Section 14 *of the Local Government Act,* 1888.

To the County Council of Lancaster;
To the County Council of Chester;
To the Mayor, Aldermen, and Citizens of the City of Manchester;
To the Mayor, Aldermen, and Burgesses of the County Borough of Bolton;
To the Mayor, Aldermen, and Burgesses of the County Borough of Bury;
To the Mayor, Aldermen, and Burgesses of the County Borough of Oldham;
To the Mayor, Aldermen, and Burgesses of the County Borough of Rochdale;
To the Mayor, Aldermen, and Burgesses of the County Borough of Salford;
To the Mayor, Aldermen, and Burgesses of the County Borough of Stockport;
And to all others whom it may concern.

51 & 52 Vict. c. 41.

Whereas by sub-s. (3) of s. 14 of the Local Government Act, 1888 (which Act is hereinafter referred to as "the Act"), it is enacted that the Local

Schedule.

Government Board by Provisional Order made on the application of the council of any of the counties concerned may constitute a joint committee or other body representing all the administrative counties through or by which a river, or any specified portion of a river, or any tributary thereof, passes, and may confer on such committee or body all of the powers of a sanitary authority under the Rivers Pollution Prevention Act, 1876, or such of them as may be specified in the Order; and that the Order may contain such provisions respecting the constitution and proceedings of the said committee or body as may seem proper, and may provide for the payment of the expenses of such committee or body by the administrative counties represented by it, and for the audit of the accounts of such committee or body, and their officers;

39 & 40 Vict. c. 75.

And whereas application has been made to the Local Government Board by the county councils of Lancaster and Chester for a Provisional Order for constituting a joint committee in pursuance of the enactment hereinbefore recited:

Now therefore, we, the Local Government Board, in pursuance of the powers given to us by ss. 14 and 59 of the Act, and by any other enactments in that behalf, do hereby order that, from and after the date of the Act of Parliament confirming this Act, the following provisions shall take effect:

51 & 52 Vict. c. 41.

Commencement of Order.

Art. I. This Order shall, except so far as is otherwise herein expressly provided, and so far as there may be anything in the subject-matter or context inconsistent therewith, come into operation on the 1st day of August, 1891.

Constitution of joint committee.

Art. II.—(1.) A joint committee (hereinafter referred to as "the joint committee") shall be constituted for the purpose of enforcing the provisions of the Rivers Pollution Prevention Act, 1876 (subject to the provisions in that Act contained), in relation to so much of the River Irwell or any tributary thereof, and to so much of the River Mersey or any tributary thereof, being above the point of intersection thereof by the southern boundary of the borough of Warrington, as passes through either of the said counties or between them, or through or by any of the county boroughs of Bolton, Bury, Manchester, Oldham, Rochdale, Salford, and Stockport:

Provided that the appointment of the joint committee shall not prejudice or in any way affect or curtail the right of any sanitary authority represented upon the said committee to continue proceedings already taken, or to commence proceedings, against any person or persons in respect of any pollution of the Rivers Irwell or Mersey, or of any tributary of either of them.

(2.) The joint committee shall consist of twenty-four members representing the said counties and county boroughs, and shall be a body corporate by the name of the joint committee of the Rivers Mersey and Irwell, with perpetual succession and a common seal, and with power to sue and be sued in that name.

Representation of constituent authorities.

Art. III. The number of members of the joint committee to be elected by each of the councils (hereinafter referred to as "the constituent authorities") of the said counties and county boroughs from among the members of its own body shall be as follows:

By the Council of the County of Lancaster ...	... Eight members.
By the Council of the County of Chester ...	... Three members.
By the Council of the County Borough of Bolton	... One member.
By the Council of the County Borough of Bury	... One member.

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By the Council of the County Borough of Manchester ... Six members.
By the Council of the County Borough of Oldham ... One member.
By the Council of the County Borough of Rochdale ... One member.
By the Council of the County Borough of Salford ... Two members.
By the Council of the County Borough of Stockport ... One member.

Date of first election.

Art. IV. The first election of members of the joint committee by each of the constituent authorities shall take place at the meeting of the constituent authority to be held next after the 1st day of August, 1891, or if for any reason no election is then made, at a meeting to be held within such further time as the Local Government Board may, by order, allow.

Notice of persons elected.

Art. V. The clerk to each of the constituent authorities shall notify in writing to the Local Government Board, and to the clerk of each of the other constituent authorities, within seven days after such first election shall have taken place, the names, addresses, and occupations of the persons elected by such authority as members of the joint committee.

Continuance in office.

Art. VI. A member of the joint committee shall continue in office until the expiration of the period for which he was elected a member thereof, or until he dies, or resigns, or becomes disqualified, or ceases to be a member of the constituent authority as a member of which he was qualified to be elected:

Provided always, that a member shall not continue in office for a longer period than three years without re-election, and a member who ceases to hold office by reason of the expiration of his period of office, or by reason of his resignation or disqualification, or ceasing to be a member of such constituent authority, shall, subject to the provisions of Article VII. of this Order, be re-eligible as a member of the joint committee, if at the time of re-election he is qualified to be so re-elected.

Disqualifica- of members.
45 & 46 Vict. c. 50.

Art. VII. The provisions of s. 12 (except sub-s. (1) (b)), and of ss. 41 and 224 of the Municipal Corporations Act, 1882, shall (*mutatis mutandis*) apply to every member of the joint committee.

Vacancies.

Art. VIII. Any vacancy occurring in the joint committee by death, resignation, disqualification, or otherwise, shall be filled up by the constituent authority in whose representation the vacancy happens at a meeting to be held as soon as practicable after the occurrence of such vacancy; and in the case of a casual vacancy, the person elected shall hold office until the time when the person in whose place he is elected would regularly have gone out of office, and he shall then go out of office.

First and other meetings.

Art. IX. The time and place of holding the first meeting of the joint committee shall be fixed by the Local Government Board, and the subsequent ordinary meetings of the joint committee shall be held at such times and places as the joint committee may appoint; and at all meetings of the joint committee six members shall constitute a quorum:

Provided that an extraordinary meeting shall be summoned by the clerk to the joint committee, when a requisition for that purpose is addressed to him by the chairman, or any three members, of the joint committee.

Such requisition shall be in writing, and no business other than that specified in the requisition shall be transacted at such extraordinary meeting.

Notices of all meetings of the joint committee shall be delivered or sent by post so as to reach the last known place of abode or business in England of each member of the joint committee three clear days before the day of meeting, or at such earlier time as the joint committee may from time to time direct.

Appointment of officers.

Art. X. The joint committee shall at their first meeting, or at any adjournment thereof, and from time to time thereafter as occasion shall require, appoint a chairman, a vice-chairman, a treasurer, and a clerk, and they may from time to time appoint one or more medical officers and such other officers and servants as they think requisite. They may pay their treasurer, clerk, medical officer, and other officers and servants such reasonable remuneration as they shall deem expedient; and every such treasurer, clerk, medical officer, officer, and servant shall be removable by the joint committee at their pleasure.

Proceedings of joint committee.

Art. XI.—(1.) In case of an equal division of votes at any meeting of the joint committee, the chairman of the meeting shall have a second or casting vote, and, except as otherwise herein provided, the joint committee may from time to time make regulations respecting their proceedings.

(2.) The proceedings of the joint committee shall not be invalidated by reason of any vacancy or vacancies among its members, or of any defect in the mode of election or qualification of any member thereof.

Sub-committees.

(3.) The joint committee may from time to time appoint out of their own body such number of sub-committees, and consisting of such number of persons, and for such purposes, as the joint committee think fit, but the acts of every such sub-committee shall be submitted to the joint committee for their approval.

Powers, etc., 39 & 40 Vict. c. 75.

Art. XII. Subject to the provisions of this Order, the joint committee shall have all the powers and duties of a sanitary authority under the Rivers Pollution Prevention Act, 1876, and all the provisions of that Act shall apply to the joint committee with the necessary modifications.

Expenses.

Art. XIII. All the expenses incurred by the joint committee in carrying out the purposes of this Order shall be defrayed out of a common fund to be contributed by the constituent authorities respectively in the following proportions:—

By the Council of the County of Lancaster ...	Eight twenty-fourths.
By the Council of the County of Chester	Three twenty-fourths.
By the Council of the County Borough of Bolton	One twenty-fourth.
By the Council of the County Borough of Bury ...	One twenty-fourth.
By the Council of the County Borough of Manchester	Six twenty-fourths.
By the Council of the County Borough of Oldham	One twenty-fourth.
By the Council of the County Borough of Rochdale	One twenty-fourth.
By the Council of the County Borough of Salford	Two twenty-fourths.
By the Council of the County Borough of Stockport	One twenty-fourth.

Contributions of constituent authorities.

Art. XIV. For the purpose of obtaining payment from the constituent authorities of the sums to be contributed by them, the joint committee shall from time to time issue their precept to each constituent authority, stating the sum to be contributed by such authority, and requiring such authority, within a time limited by the precept, to pay the sum therein mentioned to the joint committee or to such person as the joint committee may direct.

Any sum lawfully included in a precept addressed to a constituent authority as aforesaid shall be a debt due from that authority, and may be recovered accordingly.

Any such contribution shall in the case of each of the county councils be paid out of the county fund of the county as a payment for general county

Schedule. purposes, and in the case of the council of each of the county boroughs shall be paid out of the fund out of which the expenses incurred by that council as a sanitary authority in the execution of the Rivers Pollution Prevention Act, 1876, are payable.

Accounts. **Art. XV.**—(1.) The accounts of the receipts and expenditure of the joint committee shall be made up in such form and to such day in every year as the Local Government Board may from time to time prescribe.*

(2.) The accounts and minutes of the joint committee shall at all reasonable times be open, without payment, to inspection and transcription by any member of any constituent authority, or by any officer of any constituent authority who may be authorised by that authority for that purpose.

Audit. **Art. XVI.**—(1.) The accounts of the joint committee and of their officers shall be audited in like manner and subject to the like incidents and consequences as the accounts of a county council and its officers under sub-s. (3) of s. 71 of the Act.

(2.) A copy of the auditor's report and of the abstract of the accounts of the joint committee, when duly audited, shall be sent by the joint committee to each of the constituent authorities.

Settlement of differences. **Art. XVII.** If at any time any difference arises between the joint committee on the one hand and any of the constituent authorities on the other hand, or between any of the constituent authorities, respecting any matter arising out of the provisions of this Order, the same shall be referred to and be settled by arbitration in the manner provided by s. 62 of the Act.

Given under the seal of office of the Local Government
Board, this 8th day of May, 1891.
(L.S.) CHAS. T. RITCHIE, President.
HUGH OWEN, Secretary.

RIVER RIBBLE.

Provisional Order for constituting a Joint Committee under Section 14 *of the Local Government Act*, 1888.

To the County Council of Lancaster;
To the Mayor, Aldermen, and Burgesses of the County Borough of Blackburn;
To the Mayor, Aldermen, and Burgesses of the County Borough of Burnley;
To the Mayor, Aldermen, and Burgesses of the County Borough of Preston;
To the Mayor, Aldermen, and Burgesses of the County Borough of Wigan;
And to all others whom it may concern.

51 & 52 Vict. c. 41. Whereas by sub-s. (3) of s. 14 of the Local Government Act, 1888 (which Act is hereinafter referred to as "the Act"), it is enacted that the Local Government Board, by Provisional Order made on the application of the council of any of the counties concerned, may constitute a joint committee or other body representing all the administrative counties through or by which

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* By an order dated March 3rd, 1892, the Local Government Board prescribed the form and method of keeping the accounts.

Schedule.

a river, or any specified portion of a river, or any tributary thereof, passes, and may confer on such committee or body all of the powers of a sanitary authority under the Rivers Pollution Prevention Act, 1876, or such of them as may be specified in the Order; and that the Order may contain such provisions respecting the constitution and proceedings of the said committee or body as may seem proper, and may provide for the payment of the expenses of such committee or body by the administrative counties represented by it, and for the audit of the accounts of such committee or body, and their officers; 39 & 40 Vict. c. 75.

And whereas application has been made to the Local Government Board by the county council of Lancaster for a Provisional Order for constituting a joint committee in pursuance of the enactment hereinbefore recited:

Now, therefore, we, the Local Government Board, in pursuance of the powers given to us by ss. 14 and 59 of the Act, and by any other enactments in that behalf, do hereby order that, from and after the date of the Act of Parliament confirming this Order, the following provisions shall take effect: 51 & 52 Vict. c. 41.

Commencement of Order.

Art. I. This Order shall, except so far as is otherwise herein expressly provided, and so far as there may be anything in the subject-matter or context inconsistent therewith, come into operation on the 1st day of August, 1891.

Constitution of joint committee.

Art. II.—(1.) A joint committee (hereinafter referred to as "the joint committee") shall be constituted for the purpose of enforcing the provisions of the Rivers Pollution Prevention Act, 1876 (subject to the provisions in that Act contained), in relation to so much of the River Ribble, or any tributary thereof, and of the Rivers Darwen and Douglas, and the streams (as defined by the said Act of 1876), running into the Crossens Channel, as passes through the county of Lancaster, or through or by the county boroughs of Blackburn, Burnley, Preston, and Wigan:

Provided that the appointment of the joint committee shall not prejudice or in any way affect or curtail the right of any sanitary authority represented upon the said committee to continue proceedings already taken, or to commence proceedings, against any person or persons in respect of any pollution of the River Ribble, or any tributary thereof, or of the River Darwen, or of the River Douglas, or of the streams (as defined by the said Act of 1876), running into the Crossens Channel.

(2.) The joint committee shall consist of sixteen members, representing the said county and county boroughs, and shall be a body corporate by the name of the joint committee of the River Ribble, with perpetual succession and a common seal, and with power to sue and be sued in that name.

See *Ribble Joint Committee* v. *Croston U. D. C.* and *Ribble Joint Committee* v. *Halliwell*, and *Same* v. *Shorrock*, cited *ante*, p. 728.

Representation of constituent authorities.

Art. III. The number of members of the joint committee to be elected by each of the councils of the said county and county boroughs (which councils are hereinafter referred to as "the constituent authorities") from among the members of its own body shall be as follows:

By the Council of the County of Lancaster	Nine members.
By the Council of the County Borough of Blackburn ...	Two members.
By the Council of the County Borough of Burnley ...	Two members.
By the Council of the County Borough of Preston ...	Two members.
By the Council of the County Borough of Wigan ...	One member.

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Date of first election.

Art. IV. The first election of members of the joint committee by each of the constituent authorities shall take place at the meeting of the constituent authority to be held next after the 1st day of August, 1891, or if for any reason no election is then made, at a meeting to be held within such further time as the Local Government Board may, by order, allow.

Notice of persons elected.

Art. V. The clerk to each of the constituent authorities shall notify in writing to the Local Government Board, and to the clerk of each of the other constituent authorities, within seven days after such first election shall have taken place, the names, addresses, and occupations of the persons elected by such authority as members of the joint committee.

Continuance in office.

Art. VI. A member of the joint committee shall continue in office until the expiration of the period for which he was elected a member thereof, or until he dies, or resigns, or becomes disqualified, or ceases to be a member of the constituent authority as a member of which he was qualified to be elected:

Provided always, that a member shall not continue in office for a longer period than three years without re-election, and a member who ceases to hold office by reason of the expiration of his period of office, or by reason of his resignation or disqualification, or ceasing to be a member of such constituent authority, shall, subject to the provisions of Article VII. of this Order, be re-eligible as a member of the joint committee, if at the time of re-election he is qualified to be so re-elected.

Disqualification of members.

45 & 46 Vict. c. 50.

Art. VII. The provisions of s. 12 (except sub-s. (1) (b)) and of ss. 41 and 224 of the Municipal Corporations Act, 1882, shall (*mutatis mutandis*) apply to every member of the joint committee.

Vacancies.

Art. VIII. Any vacancy occurring in the joint committee by death, resignation, disqualification, or otherwise, shall be filled up by the constituent authority in whose representation the vacancy happens at a meeting to be held as soon as practicable after the occurrence of such vacancy; and in the case of a casual vacancy, the person elected shall hold office until the time when the person in whose place he is elected would regularly have gone out of office, and he shall then go out of office.

First and other meetings.

Art. IX. The time and place of holding the first meeting of the joint committee shall be fixed by the Local Government Board, and the subsequent ordinary meetings of the joint committee shall be held at such times and places as the joint committee may appoint; and at all meetings of the joint committee six members shall constitute a quorum:

Provided that an extraordinary meeting shall be summoned by the clerk to the joint committee, when a requisition for that purpose is addressed to him by the chairman, or any two members, of the joint committee.

Such requisition shall be in writing, and no business other than that specified in the requisition shall be transacted at such extraordinary meeting.

Notices of all meetings of the joint committee shall be delivered or sent by post so as to reach the last known place of abode or business in England of each member of the joint committee three clear days before the day of meeting, or at such earlier time as the joint committee may from time to time direct.

Appointment of officers.

Art. X. The joint committee shall at their first meeting, or at any adjournment thereof, and from time to time thereafter as occasion shall require, appoint a chairman, a vice-chairman, a treasurer, and a clerk, and they may from time to time appoint one or more medical officers, and such other officers and servants as they think requisite. They may pay their treasurer, clerk, medical officer, and other officers and servants such reasonable remuneration as they shall deem expedient; and every such treasurer, clerk, medical officer, officer, and servant shall be removable by the joint committee at their pleasure.

Proceedings of joint committee

Art. XI.—(1.) In case of an equal division of votes at any meeting of the joint committee, the chairman of the committee shall have a second or casting vote, and, except as otherwise herein provided, the joint committee may from time to time make regulations respecting their proceedings.

(2.) The proceedings of the joint committee shall not be invalidated by reason of any vacancy or vacancies among its members, or of any defect in the mode of election or qualification of any member thereof.

Sub-committees.

(3.) The joint committee may from time to time appoint out of their own body such number of sub-committees, and consisting of such number of persons, and for such purposes, as the joint committee think fit, but the acts of every such sub-committee shall be submitted to the joint committee for their approval.

Powers, etc., 39 & 40 Vict. c. 75.

Art. XII. Subject to the provisions of this Order, the joint committee shall have all the powers and duties of a sanitary authority under the Rivers Pollution Prevention Act, 1876, and all the provisions of that Act shall apply to the joint committee with the necessary modifications.

Expenses.

Art. XIII. All the expenses incurred by the joint committee in carrying out the purposes of this Order shall be defrayed out of a common fund to be contributed by the constituent authorities respectively in the following proportions:

By the Council of the County of Lancaster	Nine-sixteenths.
By the Council of the County Borough of Blackburn ...	Two-sixteenths.
By the Council of the County Borough of Burnley ...	Two-sixteenths.
By the Council of the County Borough of Preston ...	Two-sixteenths.
By the Council of the County Borough of Wigan ...	One-sixteenth.

Contributions of constituent authorities.

Art. XIV. For the purpose of obtaining payment from the constituent authorities of the sums to be contributed by them, the joint committee shall from time to time issue their precept to each constituent authority, stating the sum to be contributed by such authority, and requiring such authority, within a time limited by the precept, to pay the sum therein mentioned to the joint committee or to such person as the joint committee may direct.

Any sum lawfully included in a precept addressed to a constituent authority as aforesaid shall be a debt due from that authority, and may be recovered accordingly.

Any such contribution shall in the case of the county council be paid out of the county fund of the county as a payment for general county purposes, and in the case of the council of each of the county boroughs shall be paid out of the fund out of which the expenses incurred by that council as a sanitary authority in the execution of the Rivers Pollution Prevention Act, 1876, are payable.

Accounts.

Art. XV.—(1.) The accounts of the receipts and expenditure of the joint committee shall be made up in such form and to such day in every year as the Local Government Board may from time to time prescribe.*

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* By an order dated 21st March, 1892, the Local Government Board prescribed the form and method of keeping the accounts.

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(2.) The accounts and minutes of the joint committee shall at all reasonable times be open, without payment, to inspection and transcription by any member of any constituent authority, or by any officer of any constituent authority authorised by that authority for that purpose.

Audit.

Art. XVI.—(1.) The accounts of the joint committee and of their officers shall be audited in like manner and subject to the like incidents and consequences as the accounts of a county council and its officers under sub-s. (3) of s. 71 of the Act.

(2.) A copy of the auditor's report and of the abstract of the accounts of the joint committee, when duly audited, shall be sent by the joint committee to each of the constituent authorities.

Settlement of differences.

Art. XVII. If at any time any difference arises between the joint committee on the one hand and any of the constituent authorities on the other hand, or between any of the constituent authorities, respecting any matter arising out of the provisions of this Order, the same shall be referred to and be settled by arbitration in the manner provided by s. 62 of the Act.

Given under the seal of office of the Local Government Board,
this 8th day of May, 1891.

(L.S.)

CHAS. T. RITCHIE, President.
HUGH OWEN, Secretary.

MERSEY AND IRWELL JOINT COMMITTEE ACT, 1892.

(55 & 56 VICT. C. CXCI.)

An Act to make more effectual provision for Prevention of the Pollution of the Rivers Mersey and Irwell and their tributaries.

[27th June, 1892.]

WHEREAS by order of the Local Government Board dated the 8th day of May 1891 made under the Local Government Act 1888 and confirmed by Parliament a joint committee consisting of representatives of the counties of Lancaster and Chester and of the county boroughs of Bolton Bury Manchester Oldham Rochdale Salford and Stockport has been constituted and incorporated by the name of the Joint Committee of the Rivers Mersey and Irwell (hereinafter referred to as "the joint committee"):

39 & 40 Vict. c. 75.

And whereas by the said order power is conferred on the joint committee to enforce the provisions of the Rivers Pollution Prevention Act 1876 (subject to the restrictions in that Act contained) in relation to specified parts of the Rivers Mersey and Irwell and the tributaries thereof:

And whereas the restrictions contained in the said Act are such as to preclude effective action by the joint committee for the improvement of the condition of the said parts of the Rivers Mersey and Irwell and their tributaries:

And whereas the polluted and filthy condition of the said parts of the Rivers Mersey and Irwell and their tributaries urgently requires improvement and with that view it is desirable and expedient to confer such powers on the joint committee and to make such provisions as are in this Act mentioned :

And whereas the objects of this Act cannot be attained without the authority of Parliament :

May it therefore please your Majesty that it may be enacted and be it enacted by the Queen's most excellent Majesty by and with the advice and consent of the Lords spiritual and temporal and Commons in this present Parliament assembled and by the authority of the same as follows (that is to say) :

Short title.

1. This Act may be cited as the Mersey and Irwell Joint Committee Act, 1892.

See the notes, *ante*, pp. 744, 745.

PART I.

SOLID MATTERS.

Prohibition of putting solid matter into rivers.

2. Every person who—

(a) puts or throws or causes to be put or thrown or to fall ; or

(b) knowingly permits to be put or to fall or to be carried ; or

(c) causes or knowingly permits to be put in such a position as to be liable to fall or to be carried

into any river or stream within the jurisdiction of the joint committee the solid refuse of any manufactory manufacturing process brickyard mine pitshaft or quarry or any ashes cinders or clinkers or any building rubbish or any sludge or any solid sewage matter shall be deemed to have committed an offence against this Act :

Provided that notwithstanding anything in this Act contained no person shall be deemed to have committed an offence against this Act for doing or causing to be done any of the following acts (that is to say) :—

(1.) For constructing in or across any such river or stream any building weir dam or other permanent work with necessary temporary coffer-dams which but for the passing of this Act he would have a legal right to construct ; or

(2.) For pitching or depositing stones or any other suitable or solid materials (not likely to be washed or carried away by the stream or current rising to the line of an ordinary flood) at the side or on the bank of any such river or stream for the express and bona fide purpose of reclaiming land washed away by the action of such river or stream or of supporting or protecting the side or bank of any such river or stream or of repairing the same or of erecting or repairing any bridge or any building

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drain sewer or watercourse upon or within the banks of any such river or stream or the slopes or walls thereof at or convenient to the point at which the same shall be so pitched or deposited ; or

(3.) For putting into any such river or stream any sand or gravel or other natural deposit which shall have flowed from or been deposited by the current of any such river or stream.

Cf. s. 2 of Rivers Pollution Prevention Act, 1876, *ante*, p. 727.

It will be observed that the word "sludge" is introduced into this section, but the third proviso very materially minimises the effect of the introduction of the word. In *West Riding of Yorkshire Rivers Board* v. *Rawsons* (1903), 67 J. P. 407, it was held that sludge which was stirred up and sent down into the water was no longer sludge, and that therefore no offence had been committed under the corresponding section of the West Riding Act. See also *Joint Committee of the River Ribble* v. *Halliwell*, [1899] 2 Q. B. 385, *ante*, p. 728.

It would seem on the words of this section that it would be no defence under this section to show that no pollution or obstruction has resulted from the offence. *Cf.* ss. 5 and 6 of the West Riding of Yorkshire Rivers Act, 1894, at p. 773, *post.* But in *West Riding Rivers Board* v. *Goldthorpe* (unreported) (see Haworth's Law Relating to Rivers Pollution, p. 72), LAWRENCE, J., said that as the object of the statute was the prevention of pollution, there must be one of two things, either pollution of the stream or interference with the due flow.

PART II.

LIQUID SEWAGE POLLUTION.

Prohibition of sending liquid sewage into rivers.

3. Every person who causes to fall or flow or knowingly permits to fall or flow or to be carried into any river or stream within the jurisdiction of the joint committee any liquid sewage matter shall (subject as in this Act mentioned) be deemed to have committed an offence against this Act.

A person other than a sanitary authority shall not be guilty of an offence under this section in respect of the passing of sewage matter into a river or stream along a drain communicating with any sewer belonging to or under the control of any sanitary authority provided he has the sanction of the sanitary authority for so doing.

As to who "causes" or "permits" to flow, see the cases collected at pp. 730, 731, *ante.* The corresponding section of the West Riding Act (s. 7) contains no proviso necessitating the sanction of the local authority to the passing of sewage matter along a sewer under the control of the local authority in order to obtain the protection of the corresponding clause in that section. This section follows s. 3 of the general Act of 1876, *ante*, p. 728.

Power to grant time for execution of works in case of existing pollutions.

4. On the application of any sanitary authority who at the passing of this Act is committing any offence within the meaning of the last preceding section the joint committee may if having regard to all the circumstances of the case they think necessary by order grant time to such authority for executing any works or doing any acts necessary to prevent the commission of the offence and during the time specified in the order (which may be extended by a subsequent order) no proceedings under the said section shall be taken by the joint committee against the authority named in the order.

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Cf. s. 3 of Rivers Pollution Prevention Act, 1876, *ante*, p. 728.

PART III.

LIQUID MANUFACTURING POLLUTION.

Prohibition of sending polluting liquid from manufactory into rivers.

5.—(1.) Every person who causes to fall or flow or knowingly permits to fall or flow or to be carried into any river or stream within the jurisdiction of the joint committee any poisonous noxious or polluting liquid which proceeds from any manufactory or manufacturing process shall (subject as in this Act mentioned) be deemed to have committed an offence against this Act.

(2.) Where any such poisonous noxious or polluting liquid as aforesaid falls or flows or is carried into any river or stream along a channel used constructed or in process of construction at the date of the passing of the Rivers Pollution Prevention Act, 1876, or any new channel constructed in substitution thereof and having its outfall at the same spot for the purpose of conveying such liquid the person causing or knowingly permitting the poisonous noxious or polluting liquid so to fall or flow or to be carried shall not be deemed to have committed an offence against this Act if he shows to the satisfaction of the court having cognisance of the case that he is using the best practicable and reasonably available means to render harmless the poisonous noxious or polluting liquid so falling or flowing or carried into the river or stream.

39 & 40 Vict. c. 75.

See the corresponding sections of the Rivers Pollution Prevention Act, 1876 (s. 4), *ante*, and of the West Riding Act, 1894 (s. 9), *post*.

There is no provision in this Act corresponding to s. 12 of the Rivers Pollution Prevention Act, 1876, making a certificate of the Local Government Board inspector conclusive evidence as to the "best practicable and reasonably available means."

Restrictions on proceedings under this part of this Act.

6.—(1.) Proceedings shall not be taken under this part of this Act against any person without the consent of the Local Government Board.

(2.) The joint committee shall one month at least before taking proceedings under this part of this Act against any person serve by post or otherwise on such person a written notice inviting him if he desires to show cause why proceedings should not be taken to appear before the joint committee at a time and place to be specified in the notice.

(3.) If the joint committee either after hearing such person or in default of his appearance decide that proceedings ought to be taken they shall forthwith notify their decision and the grounds thereof to such person and to the Local Government Board and shall apply for the Board's consent.

(4.) The Board may hold a local inquiry into the circumstances of the case but shall inform the joint committee and such person whether they give or withhold their consent before the expiration of three months from the date of the joint committee's application for it.

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(5.) The joint committee shall not take proceedings against any person under this part of this Act and the Local Government Board shall not give their consent to such proceedings unless the joint committee and the Board respectively are satisfied that means for rendering harmless the poisonous noxious or polluting liquid are reasonably practicable and available under all the circumstances of the case.

Cf. ss. 4—6 of Rivers Pollution Prevention Act, 1876, *ante*, pp. 736—738.

The part of the Act referred to in this section is Part III., *i.e.*, s. 5. In *Ex parte Mersey and Irwell Joint Committee* (1895), 59 J. P. 756, the consent of the Local Government Board had been obtained to taking proceedings under s. 6, and the proceedings were subsequently dropped in consequence of an undertaking by the offenders to render harmless the polluting liquid. It was then alleged that the steps taken for rendering harmless the polluting liquid were inefficient, and informations were consequently laid against the offenders. It was held that the consent of the Local Government Board ought to have been again obtained before laying the informations.

The information is the commencement of the proceedings. WILLS, J., in *Beardsley* v. *Giddings*, [1904] 1 K. B., said at p. 851, "The institution of a prosecution seems to me to mean ordinarily the commencement of the proceedings by which a person is brought before the court."

The corresponding section of the West Riding Rivers Act, 1894, viz., s. 11, does not contain the provision at the end of paragraph 4, s. 6, *supra*, to the effect that the Board after inquiry must give information within three months as to whether they give or withhold their consent.

It does not appear from this section that consideration is to be given to the question whether any proceedings will inflict material injury on the interests of the industry or trade concerned. *Cf.* s. 11 of the West Riding Act.

PART IV.

PENALTIES AND PROCEDURE.

Penalty on offences against Act.

7. Every person who commits an offence against this Act for which no other penalty is specified shall be liable for the first offence to a penalty not exceeding twenty pounds and for a second or any subsequent offence to a penalty not exceeding fifty pounds and to a penalty not exceeding forty shillings for every day on which the offence is continued after conviction.

Recovery and application of penalties.

8.—(1.) Offences under this Act may be prosecuted and penalties recovered in a summary manner before a court of summary jurisdiction by the joint committee or by the clerk or other officer of the joint committee authorised in that behalf.

(2.) All penalties recovered under this Act shall be carried to the credit of the common fund of the joint committee.

(3.) A court of summary jurisdiction before which any person is summoned for an offence under this Act may by order require such person to abstain from the commission of such offence and where such offence consists in default to perform a duty under this Act may require him to perform such duty in manner in the said order specified. The court may insert in any order such conditions as to time or mode of action as it may think just and may suspend or rescind any order on such undertaking being given or condition being performed as it may think just and generally may give such directions for carrying into effect any order as to the court seems meet.

(4.) Any person making default in complying with any requirement of an order of the court under this section shall be liable to a penalty not exceeding fifty pounds a day for every day during which he is in default as the court may order.

The proceedings must be taken in accordance with the provisions of the Summary Jurisdiction Acts, and therefore the amount of daily penalties recoverable is limited to those incurred during six months. *Cf. R.* v. *Slade and Others*, [1895] 2 Q. B. 247. By s. 10 of the Summary Jurisdiction Act, 1848, every complaint or information "may be laid or made by the complainant or informant in person or by his counsel or attorney or other person authorised in that behalf." See also *Foster* v. *Fyfe*, [1896] 2 Q. B. 104.

Appeal to quarter sessions.

9. If either party in any proceedings feels aggrieved by the decision of a court of summary jurisdiction under this Act such party may appeal to the next practicable court of quarter sessions holden in or for the county borough or place where the matter of appeal arises.

The procedure on appeal is regulated by the Summary Jurisdiction Act, 1879, s. 31.

Power of entry.

10. For the better enforcement of the provisions of this Act it shall be lawful for any officer of or other person authorised by the joint committee at any time to enter on any land manufactory or other work or building for the purpose of taking and carrying away and to take and carry away samples of any effluent at the point where it passes into any river or stream within the jurisdiction of the joint committee. Such officer or person shall leave under seal a duplicate of every sample taken by him with the owner or occupier of the premises whence the effluent flows.

Any person who obstructs or molests any such officer or other person shall be liable to a penalty not exceeding five pounds.

Provisions of Act cumulative.

11. All the powers and provisions of this Act are in addition to and not in derogation of any other powers possessed by the joint committee under the provisions of the Local Government Board's Provisional Orders Confirmation (No. 10) Act, 1891, and the joint committee may exercise all or any of such other powers as if this Act had not been passed:

Nothing in this Act shall prejudice or in any way affect or curtail the right of any sanitary authority or of any conservators or other public body or of any individual to continue or to commence proceedings against any person or body of persons in respect of any pollution of the Rivers Mersey or Irwell or any tributary thereof respectively:

Provided that (save as hereinafter mentioned) proceedings shall not be taken against any person under this Act while proceedings are pending against such person in respect of the same or a similar offence under any other Act and proceedings shall not be taken against any person

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under any other Act while proceedings are pending against such person in respect of the same offence under this Act:

Nevertheless if in any case the Local Government Board shall be of opinion on the representation of the joint committee or of any person that any proceedings pending under this Act or any other Act are not being prosecuted bonâ fide and with due diligence they may by order authorise such other proceedings to be taken either under this Act or under any other Act and either by the joint committee or by any person as having regard to all the circumstances of the case the Board may think just.

Orders as to costs o inquiries.

12. The Local Government Board may make orders as to the costs incurred by them in relation to inquiries instituted by them under this Act and as to the parties by whom such costs shall be borne and every such order and every order for the payment of costs made by the said Board under this Act may be made a rule of the High Court.

Power of inspectors of Local Government Board.

13. Inspectors of the Local Government Board shall for the purposes of any inquiry directed by the Board under this Act have in relation to witnesses and their examination the production of papers and accounts and the inspection of places and matters required to be inspected similar powers to those which the inspectors of the said Board have under the Public Health Act, 1875, for the purposes of that Act.

Interpretation.

14.—(1.) In this Act—

The term "person" includes a sanitary authority and any other body of persons whether corporate or not corporate:

The term "stream" includes canalised streams brooks and watercourses:

The term "solid matter" does not include particles of matter in suspension in water.

(2.) Any liquid which merely occasions innocuous discoloration of any river or stream shall not be deemed to be "polluting" for the purposes of this Act.

As to "solid matter," see *Joint Committee of the River Ribble* v. *Halliwell*, [1899] 2 Q. B. 385, and the cases cited therewith at p. 728, *ante*.

Saving as to water flowing from mines.

15. Notwithstanding anything in this Act contained no person shall be deemed to have committed an offence against this Act or be liable to any proceeding under this Act by reason or in consequence of any water flowing into the River Mersey or the River Irwell or any tributary thereof respectively in the same condition as that in which such water has been drained or raised from any mine pit shaft or quarry or by reason or in consequence of any water flowing into the River Mersey or the River Irwell or any tributary thereof respectively from any colliery or pit bank or by reason or in consequence of any water so flowing which has passed through an efficient settling tank in connexion with any coal washing machinery.

16. Nothing in this Act shall apply to any tidal waters which have not been determined by the Local Government Board to be a stream in accordance with section twenty of the Rivers Pollution Prevention Act, 1876.

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Saving for tidal waters.

17. All the costs of and incidental to preparing and obtaining this Act as taxed by the taxing officer of one of the Houses of Parliament shall be paid by the joint committee out of their common fund.

Costs of Act.

WEST RIDING OF YORKSHIRE RIVERS ACT, 1894.*

(57 & 58 VICT. C. CLXVI.)

Rivers Pollution Prevention Acts, and West Riding of Yorkshire Rivers Act, 1894.

In the Local Government Board Report for 1899—1900 (Parliamentary Paper, 1900, Cd. 292), p. xxxiii., it is stated, "During the year we have issued ten Orders under the West Riding of Yorkshire Rivers Act, 1894, giving our consent to proceedings being taken by the West Riding of Yorkshire Rivers Board against manufacturers for the pollution of rivers and streams. The Act was obtained to enable the joint committee acting under it, by means of more stringent measures than are contemplated by the Rivers Pollution Prevention Act, to remedy the foul condition of the rivers within their jurisdiction. In some cases, however, the Rivers Board have preferred to use the alternative power which they possess of proceeding under the Rivers Pollution Prevention Act, and during the year we issued two Orders under that Act consenting to their taking proceedings against manufacturers. In six cases we decided to withhold our consent to the institution of proceedings. We took that course in the cases in question as the Rivers Board had not complied with a request made to them by the manufacturers concerned, to be allowed to appear with their solicitors before the Rivers Board, to show cause why proceedings should not be taken against them. The Rivers Board have since resolved to allow manufacturers to appear by advocates."

An Act to make more effectual provision for preventing the pollution of the Rivers of the West Riding of Yorkshire and their tributaries.

[17th August, 1894.]

Preamble.

WHEREAS by an order of the Local Government Board dated the seventeenth day of May one thousand eight hundred and ninety-three made under the Local Government Act 1888 and confirmed by the Local Government Board's Provisional Orders Confirmation (No. 16) Act 1893 a joint committee consisting of representatives of the county council of the West Riding of Yorkshire and of the county boroughs of Bradford Halifax Huddersfield Leeds and Sheffield has been constituted and incorporated by the name of the Joint Committee for the Rivers of the West Riding of Yorkshire hereinafter referred to as "the joint committee":

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* See notes, *ante*, p. 745. The provisional order referred to in the preamble of this Act will be found *in extenso* at p. 783, *post*.

And whereas by the said order power is conferred on the joint committee to enforce the provisions of the Rivers Pollution Prevention Act 1876 (subject to the restrictions in that Act contained) in relation to so much of every river or tributary thereof as passes through or by the said West Riding or through or by any of the said county boroughs :

39 & 40 Vict. c. 75.

And whereas the restrictions contained in the said Act are such as to preclude effective action by the joint committee for the improvement of the conditions of the said rivers or parts thereof and their tributaries :

And whereas the polluted and filthy condition of the said rivers or parts thereof and their tributaries urgently requires improvement and with that view it is desirable and expedient to confer such powers on the joint committee and to make such provisions as are in this Act mentioned :

And whereas it is expedient that the name of the joint committee should be changed :

And whereas the objects of this Act cannot be attained without the authority of Parliament :

May it therefore please your Majesty that it may be enacted and be it enacted by the Queen's most excellent Majesty by and with the advice and consent of the Lords spiritual and temporal and Commons in this present Parliament assembled and by the authority of the same as follows (that is to say) :—

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the West Riding of Yorkshire Rivers Act 1894.

Act divided into parts.

2. This Act is divided into parts as follows :—

Part I.—Preliminary.
Part II.—Change of Name.
Part III.—Solid Matters.
Part IV.—Liquid Sewage Pollution.
Part V.—Liquid Manufacturing Pollution.
Part VI.—Penalties and Procedure.
Part VII.—Miscellaneous.

Interpretation.

3.—(1.) In this Act—

"Rivers" or "river" includes so much of every river or tributary thereof as passes through or by the county of the West Riding of Yorkshire or through or by any of the county boroughs of Bradford Halifax Huddersfield Leeds and Sheffield ; [to which is now added the county borough of Rotherham by 2 Edw. 7, c. ccx.]

"Stream" includes canalised streams brooks and watercourses canalised rivers canals and lakes ;

NOTE.

As to what is a "stream," *cf.* s. 20 of the Rivers Pollution Prevention Act, 1876, *ante*, p. 750. There are not excepted by this section "watercourses at the passing of this Act mainly used as sewers," as in s. 20 of the Rivers Pollution Prevention Act, 1876.

"Liquid sewage" includes unpurified urine excrementitious matter and liquid refuse of any house or premises blood and the washings of a slaughter-house containing blood or urinary or fæcal matter but shall not include any liquid rendered poisonous noxious or polluting in the course of some manufacturing process ;

Cf. s. 3 of Mersey and Irwell Joint Committee Act, 1892, *ante*, p. 766 ; and s. 3 of Rivers Pollution Prevention Act, 1876, *ante*, p. 728.

"Slaughter-house" includes a knacker's yard ;

"Solid matter" does not include particles of matter in suspension in water.

As to "solid matter" see *ante*, p. 728.

(2.) Any liquid which merely occasions innocuous discoloration of any river or stream shall not be deemed to be "polluting" for the purposes of this Act.

PART II.

CHANGE OF NAME.

Change of name.

4. On and after the passing of this Act the name of the joint committee shall be changed and they shall thenceforward be called and known by the name of "The West Riding of Yorkshire Rivers Board" in this Act referred to as "The Rivers Board."

The alteration in the name of the joint committee shall not affect any rights powers authorities privileges duties or obligations of the joint committee or render defective in any manner any indictment information warrant summons writ process notice precept or proceeding preferred laid issued instituted or taken by or against the joint committee but the same respectively may be continued preferred laid issued instituted taken or commenced by at the instance or on behalf of or against the joint committee under their new name as fully as they respectively might have been continued preferred laid issued instituted taken or commenced against the joint committee under their former name the name of the West Riding of Yorkshire Rivers Board being for all purposes substituted for the name of the Joint Committee for the Rivers of the West Riding of Yorkshire.

PART III.

SOLID MATTERS.

Prohibiting putting solid matter into rivers.

5. Every person who—

(a) Puts or throws or causes to be put or thrown or to fall ; or

(b) Knowingly permits to be put or to fall or to be carried ; or

(c) Causes or knowingly permits to be put in such a position as to be liable to fall or to be carried

Sect. 5. into any river or stream within the jurisdiction of the rivers board the solid refuse of or the sweepings from any manufactory manufacturing process brickyard mine pitshaft quarry workshop or shop or any bricks stones gravel sand earth mud soil ashes cinders or clinkers or any rubbish or any deposit in a reservoir mill-dam water-lodge or pond or any sludge or any solid sewage matter or any garbage or offal from a slaughter-house or the carcase or portion of the carcase of any animal or any solid matter shall be deemed to have committed an offence against this Act.

Cf. this section with s. 14 of the Mersey and Irwell Joint Committee Act, 1892, *ante*, p. 770; and see the saving in s. 6, *post*.

Sect. 5 does not provide that any acts prohibited by the section must cause some interference with the due flow of or pollution of the water in order to complete the offence as in s. 2 of the Rivers Pollution Prevention Act, 1876. In *United Alkali Co.* v. *Simpson*, [1894] 2 Q. B. 116; 58 J. P. 607 (a case decided under an Act (54 Geo. 3, c. 159), s. 11 whereof prohibited the depositing of rubbish, etc., "in any place or situation on shore where the same shall be liable to be washed into the sea"), it was held that by the absence of such words as "so as to tend to the injury or obstruction of the navigation," which words appeared in the immediately preceding paragraph of this section, the offence was complete without evidence of any tendency to injure or obstruct navigation. But WRIGHT, J., in giving judgment in that case, was of opinion that the section can only apply to deposits of rubbish of such a kind and quantity, and in such a place that if they were washed into the sea or a navigable river they would tend to injure or obstruct navigation. And in *West Riding Rivers Board* v. *Goldthorpe* (unreported, see Haworth's Law Relating to Rivers Pollution, 2nd ed., p. 72), LAWRENCE, J., said, in deciding a case under ss. 5 and 6 (3) of the West Riding Act, "As the object of the statute was the prevention of pollution, there must be one of two things—either pollution of the stream or interference with due flow. On the evidence there is no pollution of the stream or interference with due flow." So it would seem that there must be some evidence of a tendency to pollute or obstruct in order to complete the offence.

This section, though purporting to have reference only to solids, may include matter of a liquid character in the shape of "sludge or deposit." In *West Riding of Yorkshire Rivers Board* v. *Rawsons* (1903), 67 J. P. 407, Lord ALVERSTONE, C.J., said (p. 408), "Some of the matters that are mentioned, certainly sludge or deposit, may be of a liquid character, but I do think this, that the section generally points to things which would come under the description of not being liquid, although I do not know that I would go so far as saying that they would all come under the description of being solid matter."

In the last mentioned case a deposit of mud and sludge had accumulated in a dam and the millowner had flushed out the dam, turning the whole of the water into the adjoining stream, while eight or ten men with spades conveyed and scraped the mud and sludge into the current as it flowed through the dam to the stream, thus converting the mud and sludge into matter in suspension. It was held, following the case of the *Ribble Joint Committee* v. *Halliwell*, cited *ante*, p. 728, that no offence had been committed under the above section.

Saving for certain acts.

6. No person shall be deemed to have committed an offence against this Act for doing or causing to be done any of the following acts (that is to say):

(1.) Constructing improving or maintaining in or across any river or stream any building bridge weir dam sluice or other permanent work with necessary temporary coffer-dams and other works which but for the passing of this Act he would have a legal right to do;

(2.) Pitching or depositing stones or any other suitable or solid materials (not likely to be washed or carried away by the stream or current rising to the line of an ordinary flood) at the side or on the bank of any river or stream for the express and boná fide purpose of reclaiming land washed away by the action of any river or stream or of supporting or protecting the side or bank of any river or stream or of repairing the same or of erecting or repairing any bridge or any building drain sewer or watercourse upon or within the banks of any river or stream or the slopes or walls thereof at or convenient to the point at which the same shall be so pitched or deposited;

(3.) Putting or permitting to be carried into any such river or stream any sand or gravel or other natural deposit which shall have flowed from or been deposited by the current of any such river or stream: Provided that the sand or gravel or other natural deposit so put back or carried as aforesaid do not interfere with the due flow of or pollute the waters of such river or stream.

See the notes under the last section.

PART IV.

LIQUID SEWAGE POLLUTION.

Prohibiting sending liquid sewage into rivers.

7.—(1.) Every person who causes to fall or flow or knowingly permits to fall or flow or to be carried into any river or stream within the jurisdiction of the rivers board any liquid sewage matter shall (subject as in this Act mentioned) be deemed to have committed an offence against this Act.

(2.) Where any liquid sewage matter falls or flows or is carried into any stream after passing through or along a channel which is vested in a sanitary authority the sanitary authority shall be deemed to knowingly permit the liquid sewage matter so to fall flow or be carried.

Cf. s. 1 of the Rivers Pollution Prevention Act, 1893 (56 & 57 Vict. c. 31), set out *ante*, p. 754.

See *Yorkshire* (*West Riding*) *Council* v. *Holmfirth U. S. A.*, *ante*, p. 732.

(3.) A person other than a sanitary authority shall not be guilty of an offence under this section in respect of the passing of liquid sewage matter into a river or stream along a drain communicating with any sewer belonging to or under the control of any sanitary authority.

Under the corresponding section (3) of the Rivers Pollution Prevention Act, 1876, the sanction of the local authority is required to the passing of the sewage matter into the sewer in order to exempt a person so passing the sewage from liability.

Power to grant time for execution of works in case of existing pollutions.

8.—(1.) On the application of any sanitary authority which at the passing of this Act is committing any offence within the meaning of the last preceding section the rivers board may if having regard to all the circumstances of the case they think necessary by order grant time to

Sect. 8. such authority for or with respect to the executing of any works or the doing of any acts necessary to prevent the commission of the offence.

(2.) The rivers board may in such order prescribe the several periods within which any successive steps preliminary to and requisite for the obtaining of power to execute such works or to do such acts shall be taken by such sanitary authority and the period for executing the said works and for doing the said acts and such periods or any of them may be extended by a subsequent order.

(3.) Unless and until such sanitary authority make default in taking any such step or executing any such works or doing any such act within the time prescribed in that behalf in such order no proceedings under the said section shall be taken by the rivers board against the authority named in the order.

PART V.

LIQUID MANUFACTURING POLLUTION.

Prohibiting sending polluting liquid from manufactory into rivers.

9.—(1.) Every person who causes to fall or flow or knowingly permits to fall or flow or to be carried into any river or stream within the jurisdiction of the rivers board any poisonous noxious or polluting liquid which proceeds from any manufactory or manufacturing process shall (subject as in this Act mentioned) be deemed to have committed an offence against this Act.

(2.) Where any such poisonous noxious or polluting liquid as aforesaid falls or flows or is carried into any river or stream along a channel used constructed or in process of construction at the date of the passing of the Rivers Pollution Prevention Act 1876 or any new channel constructed in substitution thereof and having its outfall at the same spot for the purpose of conveying such liquid the person causing or knowingly permitting the poisonous noxious or polluting liquid so to fall or flow or to be carried shall not be deemed to have committed an offence against this Act if he shows to the satisfaction of the court having cognisance of the case that he is using the best practicable and reasonably available means to render harmless the poisonous noxious or polluting liquid so falling or flowing or carried into the river or stream.

See the corresponding section (4) of the Rivers Pollution Prevention Act, 1876, *ante*, p. 736, and the notes under ss. 3 and 4 of that Act.

The fact that a stream is already largely polluted does not prevent the pouring of polluted liquid into it from being a pollution. See *West Riding of Yorkshire Rivers Board* v. *Hainsworth*, and other cases cited at p. 730, *ante*.

Any natural stream or watercourse may, however, cease to be a stream or watercourse and may become a sewer. See *West Riding of Yorkshire Rivers Board* v. *Reuben Gaunt & Sons, Ltd.* (1903), 67 J. P. 183, when this question was much discussed in proceedings taken under this section. See also the other cases cited with *Gaunt's Case* at p. 750, *ante*. As to the necessity of taking samples in order to enforce the provisions of this Act, see *West Riding of Yorkshire Rivers Board* v. *Hainsworth*, where proceedings were taken under s. 9 of this Act. The case is unreported, but see Haworth's Law Relating to Rivers Pollution, pp. 90—93. Lord ALVERSTONE, C.J., said:

"I do not intend to lay down any rule as to the circumstances under which an analysis is required or not. I can well imagine a case in which the character of the witness, the competence of the witness, and the facts spoken to by the witness might dispense with the analysis. On the other hand I can well imagine a case in which the mere appearance of the water was no test at all of whether it was a polluting liquid or not, and I have known water which in appearance was very pure and bright, and yet it contained the most polluting elements possible." So also DARLING, J., in the same case: "It is impossible to lay down any general rule as to what should guide them, and I understand that to mean that if they do lay down a general rule—if they do say, 'We will have analyses before we will convict'—then they are wrong, and the case may well arise where it would be perfectly obvious that they had been wrong, because a case might arise where it was perfectly plain there was no analysis necessary for a moment to show that that was a polluting matter which they declined to consider one."

Sanitary authority to afford facilities for factories draining into sewers.

10. Every sanitary or other local authority having sewers under their control shall give facilities for enabling manufacturers within their district to carry the liquids proceeding from their factories or manufacturing processes into such sewers:

Provided that this section shall not extend to compel any sanitary or other local authority to admit into their sewers any liquid which would prejudicially affect such sewers or the disposal by sale application to land or otherwise of the sewage matter conveyed along such sewers or which would from its temperature or otherwise be injurious in a sanitary point of view:

Provided also that no sanitary authority shall be required to give such facilities as aforesaid where the sewers of such authority are only sufficient for the requirements of their district nor where such facilities would interfere with any order of any court respecting the sewage of such authority.

See the corresponding section (7) of the Rivers Pollution Prevention Act, 1876, and the note thereunder.

Restrictions on proceedings under this part of this Act.

11.—(1.) Proceedings shall not be taken under this part of this Act against any person without the consent of the Local Government Board.

(2.) The rivers board shall one month at least before taking proceedings under this part of this Act against any person serve by post or otherwise on such person a written notice requiring him to show cause before the rivers board (at a time and place to be specified in the notice) why proceedings should not be taken against him under this part of this Act.

(3.) If the rivers board either after hearing such person or in default of his appearance decide that proceedings ought to be taken they shall forthwith notify their decision and the grounds thereof to such person and to the Local Government Board and shall apply for that Board's consent.

(4.) The Local Government Board may hold a local inquiry into the circumstances of the case but shall inform the rivers board and such person whether they give or withhold their consent.

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(5.) The rivers board shall not take proceedings against any person under this part of this Act and the Local Government Board shall not give their consent to such proceedings unless the rivers board and the Local Government Board respectively are satisfied after due inquiry and having regard to the reasonableness of the cost and the effect on the industry or trade in question that means for rendering harmless the poisonous noxious or polluting liquid are reasonably practicable and available under all the circumstances of the case and that no material injury will be inflicted by such proceedings on the interests of such industry or trade.

This section should be compared with s. 6 of the Mersey and Irwell Act, *ante*, p. 767. By that section a limit of three months is fixed for the action of the Local Government Board. The words "after due inquiry and having regard to the reasonableness of the cost and the effect on the industry or trade in question," and the words "and that no material injury will be inflicted by such proceedings on the interests of such industry or trade," do not occur in the Mersey and Irwell Act.

PART VI.

PENALTIES AND PROCEDURE.

Penalty on offences against Act.

12.—(1.) Except where otherwise expressly provided every person who commits an offence against this Act for which no other penalty is specified shall be liable for the first offence to a penalty not exceeding twenty pounds and for a second or any subsequent offence to a penalty not exceeding fifty pounds and to a penalty not exceeding forty shillings for every day on which the offence is continued after conviction.

(2.) A court of summary jurisdiction before which any person is summoned for an offence under this Act may (in lieu of inflicting a penalty or in addition to any penalty it may have inflicted for such offence) by order require such person to abstain from the commission of such offence and where such offence consists in default to perform a duty under this Act may require him to perform such duty in manner in the said order specified. The court may insert in any order such conditions as to time or mode of action as it may think just and may suspend or rescind any order on such undertaking being given or condition being performed as it may think just and generally may give such directions for carrying into effect any order as to the court seems meet.

(3.) Any person making default in complying with any requirement of an order of the court under this section shall be liable to such a penalty not exceeding fifty pounds a day for every day during which he is in default as the court may order.

Cf. ss. 7 and 8 of the Mersey and Irwell Act, *ante*, p. 768.

Recovery and application of penalties.

13.—(1.) Offences under this Act may be prosecuted and penalties and costs recovered in a summary manner before a court of summary jurisdiction by the rivers board or by the clerk or other officer of the rivers board authorised in that behalf.

(2.) All penalties recovered under this Act shall be carried to the credit of the common fund of the rivers board.

(3.) In all cases under this Act the costs of the parties of and incidental to the proceedings shall be in the discretion of the said court and shall be paid as it shall direct.

This provision as to costs is not contained in the Mersey and Irwell Act.

Appeal.

14.—(1.) If either party in any proceedings feels aggrieved by the decision of a court of summary jurisdiction under this Act such party may appeal to the next practicable court of quarter sessions holden in or for the county or borough or place where the matter of appeal arises.

(2.) If either party on an appeal to the said court of quarter sessions feels aggrieved by the decision of the said court he may appeal from that decision to the High Court in accordance with the Rules of the Supreme Court for the time being.

This power of appeal from quarter sessions is not given by the Mersey and Irwell Act.

(3.) On the hearing of an appeal the High Court shall have power to draw any inference of fact and may either order a new trial on such terms as the court shall think just or may order judgment to be entered for any party as the case may be or may make a final or other order on such terms as the High Court may think proper to ensure the determination on the merits of the real questions in controversy between the parties.

As to ordering a new trial, see *West Riding of Yorkshire Rivers Board* v. *Reuben Gaunt & Sons, ante*, p. 750.

(4.) If any defendant shall desire that the questions involved in any summons shall be decided in the High Court of Justice he may at any time within three days after the service of such summons give notice to the rivers board of his said desire and shall be entitled as of course on application to the registrar of the district of the High Court in which such defendant resides to an order that the said summons and all proceedings thereunder shall be removed into the High Court and be there determined by one of Her Majesty's judges of assize at the next practicable assizes for the West Riding of Yorkshire from whose decision an appeal shall lie to the Court of Appeal on questions of law only. The provisions of this sub-section shall be carried into effect in accordance with rules of the High Court.

These provisions are not contained in the Mersey and Irwell Act.
For the rules made in pursuance of sub-s. 4, see the Statutory Rules and Orders, 1895, No. 311, L. 12.

Power of entry.

15.—(1.) For the better enforcement of the provisions of this Act it shall be lawful for any officer of or other person authorised by the rivers board and producing his written authority if required so to do at any

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time to enter on any land manufactory or other work or building for the purpose of taking and carrying away and to take and carry away samples of any effluent at the point where it passes into any river or stream within the jurisdiction of the rivers board.

(2.) Any person who obstructs or molests any such officer or other person shall be liable to a penalty not exceeding five pounds.

(3.) Such samples shall be taken by such officer or person in triplicate and shall thereupon before they are taken from the premises be respectively sealed up and marked by him and he shall leave one of such triplicate samples with the occupier of the premises whence the effluent flows another shall be submitted by the rivers board (if they think fit) for analysis and the third shall be retained by the rivers board for future comparison.

Cf. s. 10 of the Mersey and Irwell Act, *ante*, p. 769. This section provides for the production of written authority, and for the taking of samples in triplicate instead of in duplicate.

Defendant, etc., may be witness.

16. All offences under this Act shall be deemed to be within the Act of 40 Victoria chapter 14 intituled "An Act for the amendment of the law of evidence in certain cases of misdemeanor."

The effect of this enactment is to make every defendant, and the wife or husband of such defendant, admissible witnesses, and compellable to give evidence. No similar enactment is contained in the Mersey and Irwell Act.

PART VII.

MISCELLANEOUS.

Provisions of Act cumulative.

17. All the powers and provisions of this Act are in addition to and not in derogation of any other powers possessed by the rivers board under the provisions of the Local Government Board's Provisional Orders Confirmation (No. 16) Act 1893 and the rivers board may exercise all or any of such other powers as if this Act had not been passed.

Nothing in this Act shall prejudice or in any way affect or curtail the right of any sanitary authority or of any canal company undertakers of any navigation conservators or other public body or of any person to continue or to commence proceedings against any person or body of persons in respect of any pollution of the rivers of the West Riding or any tributary thereof respectively:

Provided that (save as hereinafter mentioned) proceedings shall not be taken against any person under this Act while proceedings are pending against such person in respect of the same or a similar offence under any other Act and proceedings shall not be taken against any person under any other Act while proceedings are pending against such person in respect of the same offence under this Act:

Nevertheless if in any case the Local Government Board shall be of opinion on the representation of the rivers board or of any person that any proceedings pending under this Act or any other Act are not being prosecuted bonâ fide and with due diligence they may by order authorise such other proceedings to be taken either under this Act or under any other Act and either by the rivers board or by any person as having regard to all the circumstances of the case the Local Government Board may think just.

Sect. 17.

As to right to prosecute.

18. It shall not be competent for any person other than the rivers board their officers attorneys solicitors or agents or a person authorised by the Local Government Board under the provisions of the last preceding section to institute or carry on any proceeding or prosecution under the provisions of this Act.

This section does not occur in the Mersey and Irwell Act.

Orders as to costs of inquiries.

19. The Local Government Board may make orders as to the costs incurred by them in relation to inquiries instituted by them under this Act and as to the parties by whom such costs shall be borne and every such order and every order for the payment of costs made by the said Board under this Act may be made a rule of the High Court.

Power of inspectors of Local Government Board.

20. Inspectors of the Local Government Board shall for the purposes of any inquiry directed by that Board under this Act have in relation to witnesses and their examination the production of papers and accounts and the inspection of places and matters required to be inspected similar powers to those which the inspectors of the said Board have under the Public Health Act 1875 for the purposes of that Act.

Costs incurred by Local Government Board to be paid by rivers board.

21. All costs incurred by the Local Government Board (including such reasonable sum not exceeding three guineas a day as that Board may determine for the services of any inspector) in relation to the duties imposed on that Board under this Act shall be paid by the rivers board.

This section does not occur in the Mersey and Irwell Act.

Saving as to water flowing from mines.

22. Notwithstanding anything in this Act contained no person shall be deemed to have committed an offence against this Act or be liable to any proceeding under this Act by reason or in consequence of any water flowing into the said rivers or streams or any tributary thereof respectively in the same condition as that in which such water has been drained or raised from any mine pit shaft or quarry or by reason or in consequence of any water flowing into the said rivers or streams or any tributary thereof respectively from any colliery or pit bank or by reason or in consequence of any water so flowing which has passed through efficient settling tanks in connection with any coal washing machinery.

Saving for the Huddersfield Canal.

23. Notwithstanding anything in this Act contained the London and North Western Railway Company as owners of the Huddersfield Canal shall not be deemed to have committed an offence against this Act or be liable to any proceeding under this Act by reason or in consequence of their returning into the river Colne any sludge or deposit which may come into the said Huddersfield Canal by way of Aspley goit so long as

Sect. 23. such goit shall be effectually scoured once at least in every twenty-four hours Sundays excepted.

Saving for tidal waters.

24. Nothing in this Act shall apply to any tidal waters which have not been determined by the Local Government Board to be a stream in accordance with section 20 of the Rivers Pollution Prevention Act, 1876.

See as to "tidal water" the cases collected in the note under s. 20 of the Rivers Pollution Prevention Act, 1876, *ante*, at p. 750.

Saving rights of Humber Conservancy Commissioners.

25. Nothing contained in this Act shall prejudice alter vary or affect any of the provisions of the Humber Conservancy Acts 1852—1876 or any of them or prejudice or alter any title of the Humber Conservancy Commissioners in to or over any lands or foreshores held or acquired by them under the said Acts or any of them or under any lease or agreement made under the powers thereof or confirmed thereby or otherwise howsoever.

For the protection of the Aire and Calder Navigation and the Leeds and Liverpool Canal.

26. Nothing in this Act shall extend to interfere with take away abridge prejudice alter or affect any of the rights powers authorities and privileges of the undertakers of the rivers of Aire and Calder or of the Leeds and Liverpool Canal Company with reference to the construction maintenance management carrying on alteration or improvement of any river stream canalised stream reservoir canal or navigation or any works connected therewith. And nothing in this Act shall extend to prevent the said undertakers or the said company from doing any other act or thing in connection with any river or stream canalised stream reservoir canal or navigation or any work connected therewith which under any Act of Parliament they are empowered to do and which would not cause any pollution thereof or injurious interference with the due and proper flow thereof.

Saving rights of the Corporation of York.

27. Nothing in this Act shall extend to interfere with take away abridge prejudice alter or affect any of the rights powers authorities and privileges of the lord mayor aldermen and citizens of the city of York acting as trustees of the navigation of the river Ouse or as conservators of the said river with reference to the maintenance management and carrying on of the said navigation or any works connected therewith or the alteration or improvement of any part of the said river or any works connected therewith which they are now empowered to execute.

Expenses of executing this Act.

28. All expenses incurred by the rivers board in carrying this Act into execution shall be paid out of their common fund.

Costs of Act.

29. All the costs of and incidental to preparing and obtaining this Act as taxed by the taxing officer of one of the houses of Parliament shall be paid by the rivers board out of their common fund.

LOCAL GOVERNMENT BOARD'S PROVISIONAL ORDERS CONFIRMATION (No. 16) ACT, 1893.

(56 & 57 Vict. c. cxxxii.)

An Act to confirm certain Provisional Orders of the Local Government Board relating to the Counties of Hereford, Monmouth, and Worcester, to the Cities of Chichester and York, and to the Rivers of the West Riding of Yorkshire. [27th July, 1893.]

Whereas the Local Government Board have made the Provisional Orders set forth in the schedule hereto, under the provisions of the Local Government Act, 1888: 51 & 52 Vict. c. 41.

And whereas it is requisite that the said Orders should be confirmed by Parliament:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Orders in schedule confirmed.

1. The Orders as altered and set out in the schedule hereto shall be and the same are hereby confirmed, and all the provisions thereof shall have full validity and force.

Short title.

2. This Act may be cited as the Local Government Board's Provisional Orders Confirmation (No. 16) Act, 1893.

RIVERS OF THE WEST RIDING OF YORKSHIRE.

Provisional Order for constituting a Joint Committee under Section 14 *of the Local Government Act,* 1888.

To the County Council of the West Riding of Yorkshire;—

To the Mayor, Aldermen, and Citizens of the City of Leeds;—

To the Mayor, Aldermen, and Citizens of the City of Sheffield;—

To the Mayor, Aldermen, and Burgesses of the Borough of Bradford;—

To the Mayor, Aldermen, and Burgesses of the Borough of Halifax;—

To the Mayor, Aldermen, and Burgesses of the Borough of Huddersfield;—

And to all others whom it may concern.

Whereas by sub-s. (3) of s. 14 of the Local Government Act, 1888 (which Act is hereinafter referred to as "the Act"), it is enacted that the Local Government Board by Provisional Order made on the application of the council of any of the counties concerned may constitute a joint committee or other body representing all the administrative counties through or by which a river, or any specified portion of a river, or any tributary thereof, passes, and may confer on such committee or body all of the powers of a sanitary authority under the Rivers Pollution Prevention Act, 1876, or such of them

51 & 52 Vict. c. 41.

39 & 40 Vict. c. 75.

Provisional Order.

as may be specified in the Order; and that the Order may contain such provisions respecting the constitution and proceedings of the said committee or body as may seem proper, and may provide for the payment of the expenses of such committee or body by the administrative counties represented by it, and for the audit of the accounts of such committee or body, and their officers;

And whereas application has been made to the Local Government Board by the county council of the West Riding of Yorkshire, and the councils of the county boroughs of Bradford, Halifax, Huddersfield, Leeds, and Sheffield, for a Provisional Order for constituting a joint committee in pursuance of the enactment hereinbefore recited:

51 & 52 Vict. c. 41.

Now therefore, we, the Local Government Board, in pursuance of the powers given to us by ss. 14 and 59 of the Act, and by any other enactments in that behalf, do hereby order that, from and after the date of the Act of Parliament confirming this Order, the following provisions shall take effect:

Commencement of Order.

Art. I. This Order shall, except so far as is otherwise herein expressly provided, and so far as there may be anything in the subject-matter or context inconsistent therewith, come into operation on the first day of August, one thousand eight hundred and ninety-three.

Constitution of joint committee.

Art. II.—(1.) A joint committee (hereinafter referred to as "the joint committee") shall be constituted for the purpose of enforcing the provisions of the Rivers Pollution Prevention Act, 1876 (subject to the provisions in that Act contained), in relation to so much of every river or tributary thereof, as passes through or by the county of the West Riding of Yorkshire, or through or by any of the county boroughs of Bradford, Halifax, Huddersfield, Leeds, and Sheffield:

Provided that the appointment of the joint committee shall not prejudice or in any way affect or curtail the right of any sanitary authority represented upon the said committee to continue proceedings already taken, or to commence proceedings, either under any local Act or otherwise, against any person or persons in respect of any pollution of any of the said rivers, or of any tributary of any of them.

(2.) The joint committee shall consist of thirty members representing the said county and county boroughs, and shall be a body corporate by the name of the Joint Committee for the Rivers of the West Riding of Yorkshire, with perpetual succession and a common seal, and with power to sue and be sued in that name.

By the West Riding of Yorkshire Rivers Act, 1894 (57 & 58 Vict. c. clxvi.), s. 4, *ante*, p. 773, the name of the joint committee is changed to "The West Riding of Yorkshire Rivers Board."

The county borough of Rotherham was added to the above mentioned county boroughs by 2 Edw. 7, c. ccx.

Representation of constituent authorities.

Art. III. The number of members of the joint committee to be elected from among the members of its own body by each of the councils (hereinafter referred to as "the constituent authorities") of the said county and county boroughs, shall be as follows:

By the Council of the County of the West Riding of Yorkshire - - - - - - - -	Eighteen members.
By the Council of the County Borough of Bradford	Three members.
By the Council of the County Borough of Halifax -	One member.

By the Council of the County Borough of Huddersfield	One member.
By the Council of the County Borough of Leeds	Four members.
By the Council of the County Borough of Sheffield	Three members.

Date of first election.

Art. IV. The first election of members of the joint committee by each of the constituent authorities shall take place at the meeting of the constituent authority to be held next after the first day of August, one thousand eight hundred and ninety-three, or if for any reason no election is then made, at a meeting to be held within such further time as the Local Government Board may, by order, allow.

Notice of persons elected.

Art. V. The clerk to each of the constituent authorities shall notify in writing to the Local Government Board, and to the clerk of each of the other constituent authorities, within seven days after such first election shall have taken place, the names, addresses, and occupations of the persons elected by such authority as members of the joint committee.

Continuance in office.

Art. VI. A member of the joint committee shall continue in office until the expiration of the period for which he was elected a member thereof, or until he dies, or resigns, or ceases to be a member of the constituent authority as a member of which he was qualified to be elected, or otherwise becomes disqualified:

Provided always, that a member shall not continue in office for a longer period than three years without re-election, and a member who ceases to hold office by reason of the expiration of his period of office, or by reason of his resignation or disqualification, or ceasing to be a member of such constituent authority, shall, subject to the provisions of Article VII. of this Order, be re-eligible as a member of the joint committee, if at the time of re-election he is qualified to be so re-elected.

Disqualification of members. 45 & 46 Vict. c 50.

Art. VII. The provisions of s. 12 (except sub-s. (1) (b), and of ss. 41 and 220 of the Municipal Corporations Act, 1882, shall (mutatis mutandis) apply to every member of the joint committee.

Vacancies

Art. VIII. Any vacancy occurring in the joint committee by death, resignation, disqualification, or otherwise, shall be filled up by the constituent authority in whose representation the vacancy happens at a meeting to be held as soon as practicable after the occurrence of such vacancy; and in the case of a casual vacancy, the person elected shall hold office until the time when the person in whose place he is elected would regularly have gone out of office, and he shall then go out of office.

First and other meetings.

Art. IX. The time and place of holding the first meeting of the joint committee shall be fixed by the Local Government Board, and the subsequent ordinary meetings of the joint committee shall be held at such times and places as the joint committee may appoint; and at all meetings of the joint committee eight members shall constitute a quorum:

Provided that an extraordinary meeting shall be summoned by the clerk to the joint committee, when a requisition for that purpose is addressed to him by the chairman, or any three members of the joint committee.

Such requisition shall be in writing, and no business other than that specified in the requisition shall be transacted at such extraordinary meeting.

Notices of all meetings of the joint committee shall be delivered or sent by post so as to reach the last known place of abode or business in England of each member of the joint committee three clear days before the day of meeting, or at such earlier time as the joint committee may from time to time direct.

Appointment of officers.

Art. X. The joint committee shall at their first meeting, or at any adjournment thereof, and from time to time thereafter as occasion shall require, appoint a chairman, a vice-chairman, a treasurer, and a clerk, and they may from time to time appoint one or more medical officers and such other officers and servants as they think requisite. They may pay their treasurer, clerk, medical officer, and other officers and servants such reasonable remuneration as they shall deem expedient; and every such treasurer, clerk, medical officer, officer, and servant shall be removable by the joint committee at their pleasure.

Proceedings of joint committee.

Art. XI.—(1.) In case of an equal division of votes at any meeting of the joint committee, the chairman of the meeting shall have a second or casting vote, and, except as otherwise herein provided, the joint committee may from time to time make regulations respecting their proceedings.

(2.) The proceedings of the joint committee shall not be invalidated by reason of any vacancy or vacancies among its members, or of any defect in the mode of election or qualification of any member thereof.

Sub-committees.

(3.) The joint committee may from time to time appoint out of their own body such number of sub-committees, and consisting of such number of persons, and for such purposes as the joint committee think fit, but the acts of every such sub-committee shall be submitted to the joint committee for their approval.

Powers, etc. 39 & 40 Vict. c. 75.

Art. XII. Subject to the provisions of this order, the joint committee shall have all the powers and duties of a sanitary authority under the Rivers Pollution Prevention Act, 1876, and all the provisions of that Act shall apply to the joint committee with the necessary modifications.

Expenses.

Art. XIII. All the expenses incurred by the joint committee in carrying out the purposes of this Order shall be defrayed out of a common fund to be contributed by the constituent authorities respectively in the following proportions:

By the Council of the County of the West Riding of Yorkshire - - - - - - -	Eighteen-thirtieths.
By the Council of the County Borough of Bradford - - - - - - - - -	Three-thirtieths.
By the Council of the County Borough of Halifax - - - - - - -	One-thirtieth.
By the Council of the County Borough of Huddersfield - - - - - - -	One-thirtieth.
By the Council of the County Borough of Leeds	Four-thirtieths.
By the Council of the County Borough of Sheffield - - - - - - -	Three-thirtieths.

Contributions of constituent authorities.

Art. XIV.—(1.) For the purpose of obtaining payment from the constituent authorities of the sums to be contributed by them, the joint committee shall from time to time issue their precept to each constituent authority, stating the sum to be contributed by such authority, and requiring such authority, within a time limited by the precept, to pay the sum therein mentioned to the joint committee or to such person as the joint committee may direct.

(2.) Any sum lawfully included in a precept addressed to a constituent authority as aforesaid shall be a debt due from that authority, and may be recovered accordingly.

(3.) Any such contribution shall in the case of the county council be paid out of the county fund of the county as a payment for general county purposes, and in the case of the council of each of the county boroughs shall be paid out of the fund out of which the expenses incurred by that council as a sanitary authority in the execution of the Rivers Pollution Prevention Act, 1876, are payable.

Accounts.

Art. XV.—(1.) The accounts of the receipts and expenditure of the joint committee shall be made up in such form and to such day in every year as the Local Government Board may from time to time prescribe.

(2.) The accounts and minutes of the joint committee shall at all reasonable times be open, without payment, to inspection and transcription by any member of any constituent authority, or by any officer of any constituent authority who may be authorised by that authority for that purpose.

Audit.

Art. XVI.—(1.) The accounts of the joint committee and of their officers shall be audited in like manner and subject to the like incidents and consequences as the accounts of a county council and its officers under sub-s. (3) of s. 71 of the Act.

(2.) A copy of the auditor's report and of the abstract of the accounts of the joint committee, when duly audited, shall be sent by the joint committee to each of the constituent authorities.

Settlement of differences.

Art. XVII. If at any time any difference arises between the joint committee on the one hand and any of the constituent authorities on the other hand, or between any of the constituent authorities, respecting any matter arising out of the provisions of this Order, the same shall be referred to and be settled by arbitration in the manner provided by s. 62 of the Act.

Given under the Seal of Office of the Local Government Board, this Seventeenth day of May, One thousand eight hundred and ninety-three.

(L.S.)

HENRY H. FOWLER, President.
HUGH OWEN, Secretary.

GAS AND WATER WORKS FACILITIES ACT, 1870.

(33 & 34 VICT. c. 70.)

An Act to facilitate in certain Cases the obtaining of Powers for the Construction of Gas and Water Works and for the Supply of Gas and Water. [9th August, 1870.]

Preamble repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54).

PRELIMINARY.

Short title.

1. This Act may be cited for all purposes as "The Gas and Water Works Facilities Act, 1870."

Sect. 2.

Interpretation of terms.

2. For the purposes of this Act the terms hereinafter mentioned shall have the meanings hereinafter assigned to them; that is to say,

The term "local authority" shall mean the bodies of persons named in the table in the Schedule (A.) to this Act annexed:

The term "road" shall mean any carriageway being a public highway, and any bridge forming part of the same:

The term "road authority" shall mean any local authority, board, town council, body corporate, commissioners, trustees, vestry, or other body or persons in whom a road as defined by this Act is vested, or who have the power to maintain or repair such road:

The term "district," in relation to a local authority, shall mean the area within the jurisdiction of such local authority:

The term "The Lands Clauses Acts" means, so far as the provisional order in which that term is used relates to England or Ireland, the Lands Clauses Consolidation Act, 1845; and, so far as the same relates to Scotland, the Lands Clauses Consolidation (Scotland) Act, 1845; together with, in each case, the Lands Clauses Consolidation Acts Amendment Act, 1860.

DESCRIPTION OF CASES WITHIN THIS ACT.

Act to apply to certain cases.

3. This Act shall apply where powers are required for all or any of the purposes following:

(1.) To construct or to maintain and continue gasworks and works connected therewith, or to manufacture and supply gas in any district within which there is not an existing company, corporation, body of commissioners, or person empowered by Act of Parliament to construct such works or to manufacture and supply gas:

(2.) To construct or to maintain and continue waterworks and works connected therewith, or to supply water in any district within which there is not an existing company, corporation, body of commissioners, or person empowered by Act of Parliament to construct such works and to supply water:

(3.) To raise additional capital necessary for any of the purposes aforesaid:

(4.) To enable two or more companies or persons duly authorised to supply gas or water in any district or in adjoining districts to enter into agreements jointly to furnish such supply, or to amalgamate their undertakings:

(5.) To authorise two or more companies or persons supplying gas or water in any district or in adjoining districts to manufacture and supply gas or to supply water, and to enter into agreements jointly to furnish such supply and to amalgamate their undertakings:

and such purposes, or any one or more of them, as the case may be, shall, for the purposes of this Act, be deemed to be included in the term "gas undertaking" or "water undertaking," according as the same relate to the supply of gas or water; provided that any gas or water company empowered as aforesaid may apply for and avail themselves of the facilities of this Act within their own districts, respectively.

Sect. 12 of the Gas and Water Works Facilities Act, 1873, gives power to amend, vary, etc., any provisional order made under this Act.

Sect. 3, *supra*, only authorises the granting of a provisional order in a district within which there is not an existing company, etc., empowered by Act of Parliament to construct gas or water works, and to supply gas or water respectively. Nevertheless, the Board of Trade have frequently made provisional orders which have been confirmed by Parliament, giving power to the undertakers to supply in a district contained within the authorised limits of another company or of a local authority, but only with the consent of the company or local authority concerned. In such cases it is the invariable practice to insert a provision in the confirming Bill, repealing the existing statutory powers for the supply of gas or water, as the case may be, in the district in question. The most recent precedents are Brownhill's and District Gas Order, 1910 (10 Edw. 7 and 1 Geo. 5, c. 68), and Chelsham and Woldingham Water Order, 1910 (10 Edw. 7, and 1 Geo. 5, c. 94).

A provisional order may be obtained for purposes incidental to the carrying on of a gas or water undertaking, notwithstanding that the order may not include any of the purposes specifically referred to in this section. See, *e.g.*, the East Hull Gas Order, 1908 (8 Edw. 7, c. 133), which relates only to the quality of, and method for testing the illuminating power of the gas, and Sevenoaks Water Order (4 Edw. 7, c. 182), which authorises the undertakers to acquire additional lands for the purposes of the undertaking.

Under the general powers given by s. 3 (1), a provisional order has been made authorising the manufacture and distribution of acetylene gas. See Elham Valley Gas Order, 1904 (4 Edw. 7, c. 164).

The Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 161 (*post*, p. 819), after giving to urban authorities power to contract for public lighting, expressly gives them power to supply gas for public and private purposes within any part of their district, "where there is not any company or person (other than the urban authority) authorised by or in pursuance of any Act of Parliament, or any order confirmed by Parliament, to supply gas for public and private purposes." The same section goes on to authorise the granting to an urban authority, in such a case, of a provisional order under the Gas and Water Works Facilities Act, 1870, with this proviso, that the Local Government Board shall throughout the said Act be deemed to be substituted for the Board of Trade. For a corresponding enactment as regards Ireland, see Public Health (Ireland) Act, 1878 (41 & 42 Vict. c. 52), s. 80.

Sect. 161 of the Public Health Act, 1875, applies to urban authorities only, but see generally the notes under ss. 161—163 of the Public Health Act, 1875, *post*, pp. 819 *et seq.*, as to the position of rural authorities. A local authority cannot obtain a provisional order under the Gas and Water Works Facilities Act, 1870, relating to water.

When a non-statutory or other gas company applies for a provisional order, the Board of Trade will not insert a purchase clause at the instance of the local authority, except by agreement. See INTRODUCTION, p. 41.

PROVISIONAL ORDERS AUTHORISING GAS AND WATER UNDERTAKINGS.

By whom provisional orders authorising undertakings may be obtained.

4. Provisional orders authorising any gas undertaking or water undertaking under the authority of this Act may be obtained in any district by any company, companies, or person; and in the construction of this Act the term "the undertakers" shall be deemed to include any such company, companies, or person.

Where the undertakers require powers for the purpose of constructing gasworks or waterworks, or works connected therewith within any district, the consent of the local authority of such district shall be necessary before any provisional order can be obtained; and where in such district there is a road authority distinct from the local authority, the consent of such road authority shall also be necessary in any case where power is sought to break up any road of such road authority, before any provisional order can be obtained, unless the Board of Trade in any case in which the consent of the local authority or road authority is refused are of opinion after inquiry, that, having regard to all the circumstances of the case, such consent ought to be dispensed with, and in such case they shall make a special report, stating the grounds upon which they have dispensed with such consent.

Application of urban authorities for Gas Orders.

Urban authorities may also apply for and obtain provisional orders under this Act in cases where they may, under s. 161 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), themselves undertake to supply gas for the whole or any part of their district. In such a case the application for the provisional order must be made to the Local Government Board and not to the Board of Trade. Sect. 161 enacts as follows:

Powers of urban authority for lighting their district.

> Any urban authority may contract with any person for the supply of gas, or other means of lighting the streets, markets, and public buildings in their district, and may provide such lamps, lamp-posts, and other materials and apparatus as they may think necessary for lighting the same.
>
> Where there is not any company or person (other than the urban authority) authorised by or in pursuance of any Act of Parliament, or any order confirmed by Parliament, to supply gas for public and private purposes, supplying gas within any part of the district of such authority, such authority may themselves undertake to supply gas for such purposes or any of them throughout the whole or any part of their district; and if there is any such company or person so supplying gas, but the limits of supply of such company or person include part only of the district, then the urban authority may themselves undertake to supply gas throughout any part of the district not included within such limits of supply.
>
> Where an urban authority may under this Act themselves undertake to supply gas for the whole or any part of their district, a provisional order authorising a gas undertaking may be obtained by such authority under and subject to the provisions of the Gas and Water Works Facilities Act, 1870, and any Act amending the same; and in the construction of the said Act, the term "the undertakers" shall be deemed to include any such urban authority: Provided that, for the purposes of this Act, the Local Government Board shall throughout the said Act be deemed to be substituted for the Board of Trade.

It will be observed that power is given by this section to an urban sanitary authority to supply gas within its district only, and the Local Government Board have no power therefore to sanction any supply without these limits.

If the urban sanitary authority, by purchase of an existing gas undertaking or otherwise, seek to give a supply beyond the limits of their district, it will be necessary for them to obtain a special Act.

See further hereon the note under s. 161 of the Public Health Act, 1875, *post*, p. 819, and also ss. 162, 163 of the same Act, at p. 822, *post*, and the notes thereunder.

The Local Government Board may confer urban powers upon rural authorities under s. 276 of the Act of 1875, but see hereon the note under s. 161 of the Public Health Act, 1875, *post*, p. 819.

In promoting a provisional order, a local authority does not require to obtain the sanction of the ratepayers, or to adopt the other steps required by the Borough Funds Acts, as the provisional order requires confirmation by a public general Act, and those Acts do not apply to public general Acts.

As to incorporation of general Acts and the general form of provisional orders, see notes to s. 10.

There are many instances of provisional orders made by the Board of Trade authorising one or more individuals as undertakers, and in such cases power is given to assign the undertaking with the approval of the Board of Trade to any company or person.

The consent of the local and road authorities under this section is not held to be required when the application is merely for power to maintain and continue an existing gas or water undertaking. If, however, additional works are proposed, or if power is sought to supply in a district beyond the existing area of supply, the consents of the local and road authorities of the districts concerned are required.

As to what bodies are local authorities for the purposes of this section, see the notes to Schedule A., *post*, p. 800.

Dispensing with consent.

The Board of Trade have frequently exercised the power given by this section to dispense with the consent of the local authority or road authority after inquiry duly held. See the Board of Trade Reports in the Lists of Parliamentary Papers.

For a case relating to tramways in which the local authority stipulated for certain terms and conditions, including payment of a wayleave, and the agreement was held to be *intra vires* see *Attorney-General* v. *Hastings Corporation* (1903), 67 J. P. 165.

Orders made by Board of Trade.

It appears from the Board of Trade report issued after the Sessions of 1910 that, up to that time, 714 applications had been made to that Board for provisional orders since the passing of the Act of 1870, and that of these 664 had been granted, whereof 650 had been confirmed by Parliament. It does not follow that in the case of the fourteen they were rejected by Parliament, as in some instances the orders were dropped by the promoters. It also appears from the same report that in December, 1909, fifteen applications were made for gas undertakings, and five for water undertakings.

Notices and deposit of documents by promoters as in schedule.

5. The undertakers intending to make an application for a provisional order in pursuance of this Act shall proceed as follows:

(1.) On or before the first of November next before their application they shall give notice in writing of their intention to make the same to every company, corporation, or person (if any) supplying gas (if the proposed application relates to gasworks) or water (if the proposed application relates to waterworks) within the district to which the proposed application refers:

Sect. 5.

(2.) In the months of October and November next before their application, or in one of those months, they shall publish notice of their intention to make such application by advertisement, according to the regulations contained in Part One of the Schedule (B.) to this Act; and where it is proposed to abstract water from any stream for any waterwork, they shall give notice in writing of their intention to make such application to the owners or reputed owners, lessees or reputed lessees, and occupiers of all mills and manufactories or other works using the waters of such stream for a distance of twenty miles below the point at which such water is intended to be abstracted, such distance to be measured along the course of such stream, unless such waters shall within a less distance than twenty miles fall into or unite with any navigable stream, and then only to the owners or reputed owners, lessees or reputed lessees, and occupiers of such mills and manufactories as aforesaid which shall be situate between the point at which such water is proposed to be abstracted and the point at which such water shall fall into or unite with such navigable stream; and such notice shall state the name (if any) by which the stream is known at the point at which such water shall be immediately abstracted, and also the parish in which such point is situate, and the time and place of deposit of the plans and sections required by this Act to be deposited:

(3.) On or before the thirtieth day of the same month of November they shall deposit the documents described in Part Two of the same schedule, according to the regulations therein contained:

(4.) On or before the twenty-third day of December in the same year they shall deposit the documents described in Part Three of the same schedule, according to the regulations therein contained.

All maps, plans, and documents required by this Act to be deposited for the purposes of any provisional order may be deposited with the persons and in the manner directed by the Act of the session of Parliament held in the seventh year of the reign of his late majesty King William the Fourth and the first year of her present majesty, intituled "An Act to compel clerks of the peace for counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament";* and all the provisions of that Act shall apply accordingly.

Standing Order, 193A of the House of Commons, provides that no Bill originating in that House for confirming a provisional order shall be read the first time after Whitsuntide. Undertakers intending to make application for a provisional order in pursuance of this Act should attend to the circular letter of the Local Government Board (issued annually) addressed to Town Councils and Urban District Councils.

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* As to this Act, see *ante*, p. 432.

Transfer to county council of powers of certain Government departments and other authorities.

The Local Government Act, 1888 (51 & 52 Vict. c. 41), contains the following enactment:

> 10.—(1.) After the passing of this Act it shall be lawful for the Local Government Board to make from time to time a provisional order for transferring to county councils—
>
> (a) any such powers, duties, and liabilities of her Majesty's privy council, a Secretary of State, the Board of Trade, the Local Government Board, or the Education Department, or any other Government Department, as are conferred by or in pursuance of any statute and appear to relate to matters arising within the county, and to be of an administrative character; also
>
> (b) any such powers, duties, and liabilities arising within the county, of any commissioners of sewers, conservators, or other public body, corporate or unincorporate (not being the corporation of a municipal borough or an urban or rural authority, or a school board, and not being a board of guardians) as are conferred by or in pursuance of any statute;
>
> and such order shall make such exceptions and modifications as appear to be expedient, and also such provisions as appear necessary or proper for carrying into effect such transfer, and for that purpose may transfer any power vested in her Majesty in Council:
>
> (2.) Provided that before any such order is made, the draft thereof shall be approved, if it relates to the powers, duties, or liabilities of a Secretary of State, or the Board of Trade, or any other Government Department, by such Secretary of State, board, or department, and approved, if it affects the powers, duties, or liabilities of any commissioners, conservators, or body, corporate or unincorporate, by such commissioners, conservators, or body; and every such provisional order shall be of no effect until it is confirmed by Parliament.
>
> (3.) If any such powers, duties, or liabilities as are referred to in any provisional order under this section arise within two or more counties, they may be transferred to the county councils of such two or more counties jointly, and may be exercised and discharged by a joint committee of such councils.
>
> (4.) The Act of Parliament confirming any provisional order made under this section shall be a public general Act.

Unconfirmed provisional order of 1889 transferring departmental powers to county councils.

Under the powers given by the above section the Local Government Board made a provisional order dated June 4th, 1889, by which the powers of the Board of Trade, under various Acts, including the Gas and Water Works Facilities Acts, 1870 and 1873, were, subject to the provisions therein contained, transferred to the county councils; and the powers of the Local Government Board under various Acts, including the Gas and Water Works Facilities Acts and the Public Health Act, 1875 (38 & 39 Vict. c. 55), were, subject to the provisions therein contained, transferred to the county councils. This provisional order was submitted to Parliament in the session of 1889, in a Bill to confirm the same, but this Bill was not passed into law.

By the Local Government (Transfer of Powers) Act, 1903 (3 Edw. 7, c. 15), it is provided as follows:

> Sect. 1.—(1.) Section 10 of the Local Government Act, 1888, in so far as it authorises the transfer to county councils of certain powers, duties and liabilities of Government Departments, shall be construed as authorising the transfer by provisional order of all or any of those powers, duties or liabilities to the council of a particular county or county borough, as well as to such councils generally.

Sect. 5.

NOTE.

(2.) A provisional order shall not be made under this section, except on the application of the council of a county or county borough.

(3.) Where the Local Government Board propose to make a provisional order under this section transferring any power, duty or liability to the council of a county or county borough, the Board shall give notice to all local authorities, who, in the opinion of the Board, are likely to be affected by the transfer, and if, within such time as the Board prescribe, a majority of those authorities notify to the Board that they object to any such proposed transfer, the order shall not be proceeded with so far as relates to that transfer, but without prejudice to the power of the Board to propose a new order.

(4.) For the purposes of this Act, the expression "local authorities" means the following local authorities, namely, the council of a borough or other urban district, a rural district council, a board of guardians, a metropolitan borough council, and the common council of the City of London.

The Local Government (Scotland) Act, 1889 (52 & 53 Vict. c. 50), contains a clause similar to that in the English Act, but giving the power to the Secretary for Scotland.

Power for Board of Trade to determine on application and on objection.

6. The Board of Trade shall consider the application, and also any objection thereto, that may be lodged with them on or before such day as they from time to time appoint, and shall determine whether or not the undertakers may proceed with the application.

See the notes, *ante*, p. 790.

Power for Board of Trade to make provisional order.

7. Where it appears to the Board of Trade expedient and proper that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, and it has been proved to their satisfaction that all the requisitions of section five of this Act have been in all respects complied with, the Board of Trade may settle and make a provisional order accordingly.

Every such provisional order if it relates to gasworks shall expressly restrict the undertakers from manufacturing gas or any residual products arising in the manufacture of gas on any land except such as is specified in that behalf in the order ; and shall also expressly restrict them from storing gas on any land except such as is specified in that behalf in the order within three hundred yards from any dwelling-house existing at the time when the undertakers propose to store gas on such land, without the consent in writing of the owner, lessee and occupier of such dwelling-house.

Form and contents of provisional order.

Every such provisional order shall contain such other provisions as, according to the nature of the application and the facts and circumstances of each case, the Board of Trade thinks fit to submit to Parliament for confirmation in manner provided by this Act ; but so that any such provisional order shall not contain any provision for empowering the undertakers or any other person to acquire lands otherwise than by agreement, or to acquire any lands, even by agreement, except to an extent therein limited.

Costs of order.

The costs of and connected with the preparation and making of each provisional order shall be paid by the undertakers, and the Board of

Trade may require the undertakers to give security for such costs before they proceed with the provisional order.

See *post*, s. 10, as to the non-incorporation of powers regarding the taking of lands otherwise than by agreement. When the necessary land cannot be acquired by agreement, it is necessary to proceed by Bill and not by provisional order. Before granting a provisional order, the Board of Trade require the promoters to show that they are in possession of, or have entered into an agreement to purchase the scheduled lands, on which the authorised works are to be constructed. When the provisional order contains a clause authorising the undertakers to acquire additional lands for the purposes of the undertaking, the clause authorises the acquisition "by agreement and not otherwise." The provisional order can give no power to take or affect compulsorily any easement or water rights of riparian or other proprietors. The usual wording of the clause in Water Provisional Orders, authorises the taking, by agreement and not otherwise, of lands, easements, rights, or privileges therein, "not being an easement, right or privilege of water in which any persons other than the grantors have an interest." See also the note under s. 10, *post*, p. 797.

The clause usually inserted in Gas Provisional Orders, as to the acquisition of lands, provides that the undertakers "shall not create or permit a nuisance on any such lands, and that no lands shall be used by the undertakers for the purpose of manufacturing gas or residual products or of storing gas, except the lands described in the said schedule."

Provisional orders cannot be brought up by *certiorari*, to be quashed, parties aggrieved having the opportunity of petitioning against, and opposing in Parliament, the confirming public Bill (*Frewen* v. *Hastings* (1865), 34 L. J. Q. B. 159; *cf. Telford* v. *Metropolitan Board of Works* (1872), L. R. 13 Eq. 574).

Sect. 19 of the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), conferring on a mortgagee, where the mortgage is by deed, a power of sale, does not apply to the debentures of a joint stock company. By a provisional order under the Gas and Water Works Facilities Act, 1870, authorising a waterworks undertaking, two individuals "and the survivor of them and the executors or administrators of such survivor, their or his assigns," were declared to be the "undertakers" for the purposes of the order, and power was conferred on the undertakers to acquire lands by agreement (but not compulsorily), to construct waterworks, and to supply water to the inhabitants of a district and charge rates for such supply; the amount of the capital of the undertaking was specified, and the amount of all moneys borrowed by the undertakers and "secured by mortgage of the undertaking" was not at any time to exceed a specified sum. The undertaking was assigned to a limited company formed for that purpose, and the company issued debentures whereby they "charged" their undertaking, lands, works, property, and effects (both present and future) with repayment of the money borrowed, the charge being expressed to be a floating security not hindering any sale, exchange, or lease of the lands, or the receipt or payment of any moneys, or any other dealings in the course of the business of the company, but attaching to all the property for the time being, whether real or personal of the company. By a subsequent provisional order further powers were conferred on the company, and they only were recognised as undertakers for the purposes of that order. The company afterwards made default in payment of the principal moneys secured by the debentures on the day named therein for payment. In an action by the debenture holders claiming (amongst other relief) a sale of the undertaking and property comprised in the debentures as a going concern, and the appointment of a manager until sale:—*Held*, that, the waterworks undertaking being for a public purpose and not a mere private undertaking, the principle of the decision in *Gardner* v. *L. C. & D. Rail. Co.* (1866), L. R. 2 Ch. 201, was applicable; that the debentures did not confer upon the holders of them a power to sell the undertaking; and that the court ought not to direct a sale of the undertaking or the appointment of a manager (*Blaker* v. *Herts and Essex Waterworks Co.* (1889), 41 Ch. D. 399; and see *Marshall*

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v. *South Staffordshire Tramways Co.*, [1895] 2 Ch. 36; *cf. Pegge* v. *Neath District Tramways Co.*, [1895] 2 Ch. 508, and in the Court of Appeal, [1896] 1 Ch. 684; and *Reeve* v. *Medway* (*Upper*) *Navigation Co.*, [1905] W. N. 75).

See further, on the subject of debentures, the notes to s. 41 of the Companies Clauses Consolidation Act, 1845, *post;* and s. 22 of the Companies Clauses Act, 1863, *post.*

Publication of provisional order as in schedule.

8. When a provisional order has been made as aforesaid, and delivered to the undertakers, the undertakers shall forthwith deposit and publish the same by advertisement according to the regulations contained in Part Four of the Schedule (B.) to this Act.

Confirmation of provisional order by Act of Parliament.

9. On proof to the satisfaction of the Board of Trade of the completion of such publication as aforesaid, the Board of Trade shall, as soon as they conveniently can after the expiration of seven days from the completion of such publication in relation to any provisional order which shall have been published as aforesaid not later than the twenty-fifth of April in any year procure a Bill to be introduced into either House of Parliament for an Act to confirm the provisional order, which shall be set out at length in the schedule to the Bill; but until confirmation by Act of Parliament a provisional order under this Act shall not have any operation.

If while any such Bill is pending in either House of Parliament a petition is presented against any provisional order comprised therein the Bill, so far as it relates to the order petitioned against, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of a Bill for a special Act.

The Act of Parliament confirming any provisional order under this Act shall be deemed a public general Act.

The last clause of this section, by declaring that the Act of Parliament confirming a provisional order shall be deemed a public general Act, has the effect of enabling a local authority to promote a provisional order without the sanction of ratepayers and without observing the other conditions required by the Borough Funds Act, 1872 and 1903 (35 & 36 Vict. c. 91; 3 Edw. 7, c. 14), as those Acts do not apply to public general Acts.

As to taxation of costs in promoting or opposing provisional orders, see the House of Commons Costs Taxation Act, 1879 (42 & 43 Vict. c. 17), s. 1, and *In re Morley* (1875), L. R. 20 Eq. 17, decided before that Act.

The bill of costs of parliamentary agents who are also solicitors, relating exclusively to their costs as parliamentary agents is not subject to the jurisdiction of the Supreme Court for the purpose of taxation (*In the Matter of Baker, Lees & Co.*, [1903] 1 K. B. 189).

Incorporation of general Acts in provisional order.

10. The provisions of the Lands Clauses Acts shall be incorporated with every provisional order under this Act, save where the same are expressly varied or excepted by any such provisional order and except as to the following provisions, namely,—

(1.) With respect to the purchase and taking of lands otherwise than by agreement:

(2.) With respect to the entry upon lands by the promoters of the undertaking.

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Where a provisional order authorises a gas undertaking, the provisions of the Gasworks Clauses Act, 1847, shall be incorporated with such provisional order, save where the same are thereby expressly varied or excepted.

The Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41), was passed in the following year. By s. 1 of that Act the Act and the Act of 1847 are to be construed together as one Act. See note to s. 3 of the Act of 1871, *ante*, p. 220.

Where a provisional order authorises a water undertaking, the provisions of the Waterworks Clauses Act, 1847, and of the Waterworks Clauses Act, 1863, shall be incorporated with such provisional order, save where the same are thereby expressly varied or excepted.

For the purposes of such incorporation a provisional order under this Act shall be deemed the special Act.

How public general Acts are incorporated.

When an order is made empowering an urban authority to supply gas, the clause incorporating the general Acts is usually in the following terms:

> The provisions of the Lands Clauses Acts (except with respect to the purchase and taking of lands otherwise than by agreement, and with respect to the entry upon lands by the promoters of the undertaking, and except section 127 of the Lands Clauses Consolidation Act, 1845), and the provisions of the Gasworks Clauses Act, 1847 (except sections 30 to 38, and sections 43, 45, 46 and 47 thereof), and of the Gasworks Clauses Act, 1871 (except sections 8, 24 to 27, sections 29 and 35, and Schedule B. thereof), are incorporated with this order; and the said provisions of the said Gasworks Clauses Acts as so incorporated shall have effect subject to the provisions of this order, and shall apply to any gasworks constructed or provided under the authority of this order.

Substance of the excepted sections of public general Acts.

As to the excepted sections, s. 127 of the Lands Clauses Act (8 & 9 Vict. c. 18) relates to the sale of superfluous lands (as to which see s. 176 (1) of the Public Health Act, 1875, *post*, p. 881); ss. 30 to 37 of the Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), relate to profits, reserved fund, and proceedings before justices for reduction of price; s. 38 refers to annual accounts and the sending of the same to the clerk of the peace; ss. 43, 45, 46 and 47 relate to miscellaneous matters; s. 8 of the Act of 1871 relates to the appointment of a receiver; ss. 24 to 27 relate to supply to public lamps; ss. 29 to 34 relate to the appointment of the gas examiner and to the testing of the gas; and s. 35 and Sched. B. refer to the annual accounts which, under the Act of 1871, are to be kept according to the prescribed forms. Urban authorities supplying gas are therefore not required to keep their accounts in the forms prescribed by Sched. (B.). See *infra*.

As regards the testing of the gas, a special provision is generally inserted which will be found, *ante*, p. 238.

Accounts.

As regards accounts, the following special provisions are generally inserted in provisional orders in favour of urban authorities:

"Art. —. The council shall keep separate capital and revenue accounts of all receipts, credits, payments, liabilities and transactions in and about the execution and in relation to the purposes of this order, which accounts shall be distinct from the other accounts of the council, and shall be called respectively 'The Gas Capital Account' and 'The Gas Revenue Account.'

"Art. —. All moneys from time to time received by the council by way of revenue under this order shall be applied for the following purposes:

"In payment of the gas establishment charges (that is to say) of the expenses properly chargeable to revenue of constructing, carrying on and maintaining the gasworks;

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"In payment of the interest on the moneys borrowed or re-borrowed for the purposes of this order;

"In providing for the discharge of any moneys borrowed or re-borrowed for the purposes of this order in accordance with the provisions of this order, or if those moneys were borrowed thereunder, of the Local Loans Act, 1875;

"In setting apart, if the council think fit, a yearly sum not exceeding ten pounds per centum of such revenue for the purpose of forming a reserve fund, to provide for any extraordinary expenditure in connection with the gas undertaking: Provided that the reserve fund shall be accumulated by way of compound interest by investment in the manner specified in Art. — of this order as to the sinking fund until it amounts, according to the market price of the investments, to the sum of , and that, whenever the reserve fund amounts according to the market price of the investments, to the sum of , the income therefrom shall be applied in the same manner as moneys received by the council by way of revenue under this order;

"In payment, if the council think fit, of the expenses of executing any permanent works authorised by this order;

"The residue (if any) of such revenue shall be carried to the credit of the district fund, but no part of that revenue shall be carried to the credit of the district fund when the price of gas to private consumers exceeds per one thousand cubic feet."

Similar provisions inserted in local Acts authorising urban authorities.

Enactments on similar lines are also inserted in local Acts authorising urban authorities to undertake gas supply.

Usual clause for raising money.

Where an urban authority obtains a provisional order to supply gas, the following section as to raising money is generally inserted: "For the purpose of raising money under this order the provisions of the Local Loans Act, 1875, shall be available to the council, and sections 236 to 238 of the Public Health Act, 1875, shall apply to all money borrowed and re-borrowed on mortgage under this order."

As to repayment of moneys borrowed it is usual to provide in gas orders in favour of urban authorities that the moneys borrowed shall be repaid within such period not exceeding fifty years from the date of the borrowing as the council with the sanction of the Local Government Board shall in each case determine.

The provisional orders made by the Board of Trade under this Act do not substantially differ in terms from special Acts relating to the supply of gas or water, except in regard to the compulsory acquisition of or entry upon lands, and the incorporation of the promoters. Companies applying for a provisional order must have been previously incorporated by special Act or registered under the Companies Acts. As regards the raising of capital, a non-parliamentary company remains subject to its memorandum and articles of association, with the addition of any restrictions imposed by the provisional order. The clause dealing with the capital of such a company is usually as follows: "The share capital of the undertakers shall not for the purposes of the undertaking exceed unless the undertakers are hereafter authorised to raise for such purposes further additional share capital by provisional order under the Gas and Water Works Facilities Act, 1870, or by Act of Parliament ."

The clause limiting the borrowing powers of the undertakers provides that "no higher rate of interest than *five* pounds per centum per annum shall be paid by the undertakers without the consent of the Board of Trade." No such limitation with regard to interest is usually inserted in Gas and Water Acts.

Where the provisional order authorises a maximum price of gas, the following provision which is not contained in special Acts is usually inserted: "Provided that at any time after the expiration of three years

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from the commencement of this order, the Board of Trade may, if they think fit, by order in writing to be signed by a secretary or assistant-secretary of the said Board, alter the said maximum price either by substituting any other sum for the said sum of , or by giving a standard price with sliding scale as to profits, and as from the date specified in such order, the price to be charged by the undertakers for gas supplied by them shall be in accordance with such order." In the event of a standard price being so fixed the appropriate provisions relating to the working of the sliding scale, which are set out in a Schedule, are to come into force, and it is further provided that "a copy of such order made by the Board of Trade shall be published in the *London Gazette*, and a copy of the said *Gazette* containing such order shall be conclusive evidence of the due making and validity of the same and of the contents thereof."

The Board of Trade do not, as a general rule, insert clauses varying the requirements of the general Acts, except where the clauses are agreed. The provisional orders contain many instances of such clauses for the protection of road authorities and railway companies.

During the Session of 1904, the promoters of the Rainham Provisional Order under the Gas and Water Works Facilities Acts, agreed to insert a clause in favour of the L. C. & D. Rail. Co., and the S. E. & C. Rail. Co.'s managing committee, providing for payment by the promoters of a wayleave for use of a railway bridge for the purpose of carrying water mains. The Board of Trade refused to insert the clause. The railway authorities petitioned against the confirming Bill, which came before a committee of the House of Lords, presided over by the Earl of Lauderdale. For precedents, the following Acts were referred to: Margate, 1902, and Ticehurst Water, 1902. The Hon. T. H. W. Pelham attended the committee and stated that, in the view of the Board of Trade, the clause involved an alteration of the general law. The committee declined to insert the clause.

Cf. Taff Vale Rail. Co. v. *Pontypridd U. D. C.*, cited, *ante*, p. 182.

Cesser of powers at expiration of prescribed time.

11. If any undertakers empowered by any provisional order under this Act to make works do not, within three years from the date of such provisional order, or within any shorter period prescribed therein, complete the works; or

If within one year from the date of the provisional order, or within such shorter time as is prescribed in the provisional order, the works are not substantially commenced; or,

If the works are commenced, but whilst the powers to carry them on exist are suspended without a reason sufficient in the opinion of the Board of Trade to warrant such suspension;

the powers given by the provisional order to the undertakers for executing such works, or otherwise in relation thereto, shall cease to be exercised, except as to so much of the same as is then completed, unless the time be prolonged by the special direction of the Board of Trade.

It does not appear that under this section the Board of Trade are empowered to issue a direction prolonging the prescribed period for the commencement or completion of the works respectively after the prescribed period has been allowed to expire.

The regulations made by the Board of Trade with respect to applications for the exercise of the powers hereby conferred on them are set out on p. 811, *post*.

A statement in writing by the Board of Trade to the effect that such works have not been completed, or that the works have not been substantially commenced, or that they have been suspended without

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Gas rents and water rates in schedule.

12. The undertakers empowered by any provisional order under this Act may demand and take, in respect of gas or water supplied by them under the authority of such provisional order, rents and rates respectively not exceeding the sums specified in such provisional order, subject and according to the regulations therein specified.

Company not exempt from provisions of general Act.

13. Nothing in any provisional order, or Act confirming the same, shall exempt the undertaking, or the company, corporation, or person to whom it belongs, from the provisions of any general Act of Parliament relating to gasworks or waterworks passed after the passing of this Act, or from any revision or alteration under the authority of Parliament of the maximum rents and rates allowed to be taken under the provisional order.

Queen in council may substitute any department for Board of Trade for the purposes of this Act.

14. For the purpose of carrying into effect the provisions of this Act, it shall be lawful for her Majesty at any time after the passing of this Act, by Order in Council, to substitute for the Board of Trade any other department of her Majesty's Government, and from and after such time as may be specified for the purpose in any such order, or if no time be specified therein from and after the date of such order, all matters to be done in pursuance of this Act by or in connexion with the Board of Trade shall be done by or in connexion with such substituted department.

Act not to apply to metropolis.

15. This Act shall not apply to any place within the metropolis, as the same is defined in the Metropolis Management Act, 1855.

SCHEDULE A.

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.
England and Wales.	
Boroughs *	The mayor, aldermen, and burgesses acting by the council.
Any place other than a borough, and under the jurisdiction of commissioners, trustees, or other persons intrusted by any Local Act with powers of improving, cleansing, or paving any town.	The commissioners, trustees, or other persons intrusted by the Local Act with powers of improving, cleansing or paving the town.
Any place not included in the above descriptions, and within the jurisdiction of local board constituted in pursuance of the Public Health Act, 1848, and the Local Government Act, 1858, or one of such Acts.†	The local board.

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* "Borough" shall mean any place for the time being subject to an Act passed in the session holden in the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the regulation of Municipal Corporations in England and Wales." See now the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 242 (3).

† See now the Public Health Act, 1875 (38 & 39 Vict. c. 55), and s. 313 of that Act. The urban district councils created under the Local Government Act, 1894, now take the place of the local boards.

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.
England and Wales—continued.	
Any place or parish not within the above descriptions, and in which a rate is levied for the maintenance of the poor.	The vestry, select vestry, or other body of persons, acting by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry.*
Scotland.†	
Places within the jurisdiction of any town council, and not subject to the separate jurisdiction of police commissioners or trustees.	The town council.
In places within the jurisdiction of police commissioners or trustees exercising the functions of police commissioners under any General or Local Act.	The police commissioners or trustees.
In any parish or part thereof over which the jurisdiction of a town council, or of police commissioners or trustees exercising the functions of police commissioners does not extend.	The parochial board.
Ireland.‡	
The city of Dublin	The Right Honourable the Lord Mayor, aldermen, and burgesses, acting by the town council.
Towns corporate, with exception of Dublin ...	The mayor, aldermen, and burgesses, acting by the town council.
Towns having commissioners under an Act made in the 9th year of the reign of George the Fourth, intituled "An Act to make provision for the lighting, cleansing, and watching of cities and towns corporate and market towns in Ireland in certain cases."	The commissioners.
Towns having municipal commissioners under 3 & 4 Vict. c. 108.	The municipal commissioners.
Towns having town commissioners under the Towns Improvement (Ireland) Act, 1854 (17 & 18 Vict. c. 103), or any Acts amending the same, or under any Local Act.	The town commissioners.
Townships having commissioners under Local Acts.	The township commissioners.

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* As regards local authorities, urban district councils only have the power to undertake gas supply. See s. 161 of the Public Health Act, 1875. As regards rural authorities, the Local Government Board, by s. 276, may invest them with the powers of an urban authority. A parish council has no power to apply for a provisional order under the Gas and Water Works Facilities Acts. They have the power of adopting the Lighting and Watching Act, 1833. See Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 7 (1). The parish council, or if there is no parish council, the parish meeting, is, however, held to be a local authority for the purpose of the consent required by s. 4, *ante*.

† The Town Councils (Scotland) Act, 1900 (63 & 64 Vict. c. 49), provides that a town council shall be elected for every borough (s. 5), and transfers to the town council all the powers, etc., of commissioners under the Burgh Police (Scotland) Act, 1892, and of any body of police, gas, or water commissioners, and of the burgh local authority under the Public Health (Scotland) Act, 1897 (60 & 61 Vict. c. 38), s. 8. By the Local Government (Scotland) Act, 1894 (56 & 57 Vict. c. 58), the duties of the parochial board are transferred to parish councils created under that Act (ss. 8, 21). The powers of the Board of Trade to make provisional orders are not taken away by the Private Legislation Procedure (Scotland) Act, 1899 (62 & 63 Vict. c. 47). See s. 16 (2).

‡ As regards town authorities in Ireland, see now the Local Government (Ireland) Act, 1898 (61 & 62 Vict. c. 37), whereby urban district councils are created (s. 22).

Sched. B.

SCHEDULE B.

PROVISIONAL ORDERS.

PART I.

Advertisement in October or November of Intended Application.

(1.) Every advertisement is to contain the following particulars:

1. The objects of the intended application.
2. A general description of the nature of the proposed new works, if any.
3. The names of the townlands, parishes, townships, and extra-parochial places in which the proposed new works, if any, will be made.
4. The times and places at which the deposit under Part II. of this schedule will be made.
5. An office, either in London or at the place to which the intended application relates, at which printed copies of the draft provisional order, when deposited, and of the provisional order, when made, will be obtainable as hereinafter provided.

(2.) The whole notice is to be included in one advertisement, which is to be headed with a short title descriptive of the undertaking.

(3.) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by the proposed undertaking, where the proposed works, (if any) will be made; or if there be no such newspaper, then in some one and the same newspaper published in the county in which every such district, or some part thereof, is situate; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.

(4.) The advertisement is also, in every case, to be inserted once at least in the London, Edinburgh, or Dublin Gazette, accordingly as the district is situate in England, Scotland, or Ireland.

PART II.

Deposit on or before November 30th.

(1.) The undertakers are to deposit:—

1. A copy of the advertisement published by them.
2. If the application relates to gas, a map showing the land proposed to be used for the manufacture of gas, or of residual products arising in the manufacture of gas.
3. A proper plan and section of the proposed new works, if any, such plan and section to be prepared according to such regulations as may from time to time be made by the Board of Trade in that behalf.

(2.) The documents aforesaid are to be deposited for public inspection—

In England or Ireland in the office of the clerk of the peace for every county, riding, or division; in Scotland, in the office of the principal sheriff clerk for every county, district, or division which will be affected by the proposed undertaking, or in which any proposed new work will be made.

(3.) The documents aforesaid are also to be deposited at the office of the Board of Trade.

PART III.

Deposit on or before December 23rd.

(1.) The undertakers are to deposit at the office of the Board of Trade—

1. A memorial signed by the undertakers, headed with a short title descriptive of the undertaking (corresponding with that at the head of the advertisement), addressed to the Board of Trade, and praying for a provisional order.
2. A printed draft of the provisional order as proposed by the undertakers, with any schedule referred to therein.
3. An estimate of the expense of the proposed new works, if any, signed by the persons making the same.

(2.) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement; such copies to be there furnished to all persons applying for them at the price of not more than one shilling each.

(3.) The memorial of the undertakers (to be written on foolscap paper bookwise with quarter margin) is to be in the following form, with such variations as circumstances require:

[*Short title of undertaking.*]

To the Board of Trade,

The memorial of the undertakers of [*short title of undertaking*], showeth as follows:

1. Your memorialists have published, in accordance with the requirements of the Gas and Water Works Facilities Act, 1870, the following advertisement:

[*Here advertisement to be set out verbatim.*]

2. Your memorialists have also deposited, in accordance with the requirements of the said Act, copies of the said advertisement and

[*Here state deposit of the several matters required by Act.*]

Your memorialists, therefore, pray that a provisional order may be made in the terms of the draft proposed by your memorialists, or in such other terms as may seem meet.

A. B.,
C. D.,
Undertakers.

PART IV.

Deposit and Advertisement of Provisional Order when made.

(1.) The undertakers are to deposit printed copies of the provisional order, when settled and made, for public inspection in the offices of clerks of the peace and sheriff clerks where the documents required to be deposited by them under Part II. of this schedule were deposited.

(2.) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement, such copies to be there furnished to all persons applying for them at the price of each.

(3.) They are also to publish the provisional order as an advertisement once in the local newspaper in which the original advertisement of the intended application was published.

GAS AND WATER WORKS FACILITIES ACT, 1870, AMENDMENT ACT, 1873.

(36 & 37 VICT. c. 89.)

An Act to extend and amend the provisions of the Gas and Water Works Facilities Act, 1870.] [5th August 1873.]

Preamble repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54).

Short title.

1. This Act may be cited for all purposes as the Gas and Water Works Facilities Act, 1870, Amendment Act, 1873.

The succeeding sections (2—11) are repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39).

Power of Board of Trade to revoke, amend, extend, or vary provisional order.

12. Where under the Gas and Water Works Facilities Act, 1870, or this Act, the Board of Trade have made any provisional order, they may from time to time revoke, amend, extend, or vary such provisional order by a further provisional order.

Every application for such further provisional order shall be made in like manner and subject to the like conditions as the application for the former provisional order.

Every such further provisional order shall be made and confirmed in like manner in every respect as the former provisional order.

The powers given to the Board of Trade by this section are now exercised by the Local Government Board, so far as regards the supply of gas to their district by urban authorities. See *ante*, p. 790.

Authorising and regulating inquiries by the Board of Trade for purposes of Gas and Water Works Facilities Act, 1870, and this Act.

13. Where, in relation to any application for a provisional order under the Gas and Water Works Facilities Act, 1870, or under this Act, it is in the opinion of the Board of Trade expedient that an inquiry should be held, they may order and direct such inquiry to be held at such time and place as they may think proper, subject to the provisions following:

1. The inquiry shall be held in public before an officer or officers to be appointed in that behalf by the Board of Trade, hereinafter called the commissioner or commissioners:
2. Ten days notice at the least shall be given by the commissioner or commissioners of the time and place at which the inquiry is to be commenced:
3. The inquiry shall be commenced at the time and place so appointed, and the commissioner or commissioners may adjourn the inquiry from time to time as may be necessary to such time and place as he or they may think fit:
4. The commissioner or commissioners by summons shall, on the application of any party interested in the inquiry, require the attendance before him or them, at a place and time to be mentioned in the summons, of any person to be examined as

a witness before him or them, and every person summoned shall attend the commissioner or commissioners, and answer all questions touching the matter to be inquired into, and any person who wilfully disobeys any such summons or refuses to answer any question put to him by the commissioner or one of the commissioners for the purposes of the said inquiry, shall, on summary conviction before two justices, or in Scotland before any sheriff or sheriff substitute, be liable to a penalty not exceeding five pounds: Provided always, that no person shall be required to attend in obedience to any such summons unless the reasonable charges of his attendance shall have been paid or tendered to him, and no person shall be required in any case in obedience to any such summons to travel more than ten miles from his place of abode:

5. The commissioner or commissioners shall make a report to the Board of Trade in writing, and shall deliver copies of the report upon request to all or any of the parties to the inquiry.

The powers given to the Board of Trade by this section are now exercised by the Local Government Board, so far as regards the supply of gas to their district by urban authorities. See *ante*, p. 790.

Rules for carrying Acts into effect.

14. The Board of Trade may from time to time make, and, when made, may rescind, annul, or add to, rules with respect to the following matters:

The proceedings to be had before the Board under the Gas and Water Works Facilities Act, 1870, or this Act; and

As to any other matter or thing in respect of which it may be expedient to make rules for the purpose of carrying the said Act or this Act into execution.

Any rules made in pursuance of this section shall be deemed to be within the powers conferred by the said Act or this Act, and shall be of the same force as if enacted in the said Act, or this Act, and shall be judicially noticed.

Any rules made in pursuance of this section shall be laid before Parliament within three weeks after they are made, if Parliament be then sitting, and if Parliament be not then sitting, within three weeks after the beginning of the then next session of Parliament.

See note to preceding section. See Regulations of the Local Government Board, *post*, p. 813, and those of the Board of Trade, *post*, p. 806.

Act not to extend to metropolis.

15. This Act shall not apply to any place within the metropolis as the same is defined in the Metropolis Management Act, 1855.

SCHEDULE.

[The Schedule is repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39).]

BOARD OF TRADE RULES.

(Issued August, 1886.)

With respect to Provisional Orders and other matters under the abovementioned Act, with copy of a portion of the Act.

By the Gas and Water Works Facilities Act, 1870, it is provided as follows :

NOTES.

(1) All memorials, objections, and other documents should be on paper of foolscap size.

(2) Promoters who desire to be incorporated must register themselves under the Companies Act, 1862.*

DESCRIPTION OF CASES WITHIN THIS ACT, BY WHOM PROVISIONAL ORDERS MAY BE OBTAINED, AND THE NECESSARY CONSENTS THERETO.

[*Here follow* ss. 3, 4 *and* 2, *and Schedule. See pp.* 788, 790, 800.]

BOARD OF TRADE RULES.

Evidence of consent of local and road authorities.

Rule I.—Evidence of the consent required by the foregoing s. 4 must be given by furnishing, at the time fixed for proving compliance with the Act and these rules, a certified copy of the resolution passed at the meeting of the local or road authority, as the case may be, at which the application was approved, together with a copy of the notice convening the meeting, which notice must contain a statement that the subject of the proposed provisional order will be brought before the meeting.

ADVERTISEMENT AND NOTICES IN OCTOBER OR NOVEMBER AND DECEMBER.

Advertisement and notices of intended application.

5. The undertakers intending to make an application for a provisional order in pursuance of this Act shall proceed as follows:

(1.) On or before the first of November next before their application they shall give notice in writing of their intention to make the same to every company, corporation, or person (if any) supplying gas (if the proposed application relates to gasworks) or water (if the proposed application relates to waterworks) within the district to which the proposed application refers:

(2.) In the months of October and November next before the application, or in one of those months, they shall publish notice of their intention to make such application by advertisement, according to the regulations contained in Part One of the Schedule (B.) to this Act; and where it is proposed to abstract water from any stream for any waterwork, they shall give notice in writing of their intention to make such application to the owners or reputed owners, lessees or reputed lessees, and occupiers of all mills and manufactories or other works using the waters of such stream for a distance of twenty miles below the point at which such water is intended to be abstracted, such distance to be measured along the course of such stream, unless such waters shall within a less distance than twenty miles fall into or unite with any navigable stream, and then only to the owners or reputed owners, lessees or reputed lessees, and occupiers of such mills and manufactories as aforesaid which shall be situate between the point at which such water is proposed to be abstracted and the point at which such water shall fall into or unite with such navigable stream; and such notice shall state the name (if any) by which the stream is known at the point at which such water shall be immediately abstracted, and also the parish in which such point is situate, and the time and place of deposit of the plans and sections required by this Act to be deposited:

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* See now the Companies (Consolidation) Act, 1908.

(3.) On or before the thirtieth day of the same month of November they shall deposit the documents, described in Part Two of the same schedule, according to the regulations therein contained:

(4.) On or before the twenty-third day of December in the same year they shall deposit the documents described in Part Three of the same schedule, according to the regulations therein contained.

* * * * *

Schedule B.—(Part I.)

[*Here follows Part I. of Schedule B., for which see ante, p.* 802.]

Notice to owners and lessees of railways, tramways, and canals.

Rule II.—On or before the 15th day of December immediately preceding the application for any provisional order for constructing gasworks or waterworks, or works connected therewith whereby it is proposed to lay any pipes along or across any railway, tramway, canal, or navigable river, or over any county bridge, or otherwise to affect or interfere with such railway, tramway, canal, navigable river, or county bridge, notice in writing of such application shall be served upon the owner or reputed owner, and upon the lessee or reputed lessee of such railway, tramway, canal, or navigable river, and upon the county justices* with respect to such bridges, and such notice shall state the place or places at which the plans of the works to be authorised by such order have been or will be deposited.

Every such notice must be accompanied by a copy of Rule XV., omitting the first paragraph, and must state where copies of the draft provisional order, when deposited at the Board of Trade, can be obtained.

Notice to persons within 300 yards of proposed gasworks.

Rule III.—When the application includes a power to construct works for the manufacture of gas the promoters must comply with the requirements of the following Standing Order of the House of Lords and of the House of Commons:

"On or before the 15th day of December immediately preceding the application for a bill . . . for constructing gasworks . . . or works for the manufacture or conversion of the residual products, notice shall be served upon the owner, lessee, and occupier of every dwelling-house situate within 300 yards of the limits within which . . . such works may be constructed."

Notice in case of storage of gas.

Rule IV.—Similar notice to the above must be given when works are proposed to be constructed for the *storage of gas*.

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* County bridges are now vested in county councils.

Rules.

Intimation to intending objectors.

Rule V.—The preceding advertisement and notices must state that every company, corporation, or person desirous of making any representation to the Board of Trade, or of bringing before them any objection respecting the application, may do so by letter addressed to the Assistant Secretary of the Railway Department of the Board of Trade, on or before the 15th of January next ensuing; that copies of their objections must at the same time be sent to the promoters, and that in forwarding to the Board of Trade such objections, the objectors or their agents should state that a copy of the same has been forwarded to the promoters or their agents.

DEPOSITS ON OR BEFORE 30TH NOVEMBER.

Schedule B.—(Part II.)

[*Here follows Part II. of Schedule B., for which see ante, p.* 802.]

Deposit on 30th November of map of the district.

Rule VI.—A published map of the district on a scale of not less than one inch to the mile [if there is no published map then the best map obtainable], showing the boundaries of the proposed limits of supply and the situation of the proposed works, must also be deposited at the Board of Trade on or before 30th November.

Where the application proposes any extension of the existing limits of supply, the proposed extension should be distinguished from the existing area of supply.

Plans in certain cases to be in duplicate.

Rule VII.—The plans to be deposited with the clerk of the peace (or sheriff clerk as the case may be) must be in duplicate. See Standing Order of the House of Lords and of the House of Commons.

Maps and plans of gasworks.

Rule VIII.—The map to be deposited under Part II. of Schedule B. with respect to gasworks must be on a scale of not less than one inch to a mile, and the plan of the proposed works shall be on a scale of not less than one inch to the 100 feet, and prepared as far as may be in accordance with the model plan appended to these rules. In cases where any of the works shall be situate on tidal lands within the ordinary spring tides, all tidal waters must be coloured blue on the map and plan.

Plans and sections of waterworks.

Rule IX.—The plans and sections to be deposited under Part II. of Schedule B. with respect to waterworks shall be such plans and sections as would be required by the Standing Orders for the time being of the Houses of Parliament, if the promoters instead of applying for a provisional order were proceeding by private Bill.

Plans, etc., to be deposited in Parliament.

Rule X.—The following Standing Orders must also be complied with:*

Standing Order of the House of Lords.

"Whenever plans, sections, books of reference, or maps are deposited in the case of an application to any public department or county council for a provisional order or certificate, duplicates of the said documents shall at the same time be deposited in the office of the Clerk of the Parliaments, provided that, with regard to such deposits as are so made at any public department or with any county council after the prorogation of Parliament and before the 30th day of November in any year, such duplicates shall be so deposited on or before the 30th day of November."

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* These Standing Orders refer to *amended* as well as to original plans.

Standing Order of the House of Commons.

"Whenever plans, sections, books of reference, or maps are deposited in the case of an application to any public department or county council for a provisional order or provisional certificate, duplicates of the said documents shall, at the same time, be deposited in the Private Bill Office; provided that, with regard to such deposits as are so made at any public department or with any county council after the prorogation of Parliament, and before the 30th day of November in any year, such duplicates shall be so deposited on the 30th day of November."

DEPOSITS ON OR BEFORE 23RD DECEMBER.

Schedule B.—(Part III.)

[*Here follows Part III. of Schedule B., for which see ante, p.* 803.]

Rule XI.—The following documents, etc., must also be deposited at the Board of Trade on the 23rd December:

(1.) A complete list of every railway, tramway, and canal along or across which it is proposed to lay any pipes, or otherwise to affect or interfere with, together with the names and addresses of the owners or reputed owners and lessees or reputed lessees thereof, and a certified copy of the notice served upon them.

List of railways, tramways, and canals, and copy of notice.

(2.) When the application includes a power to construct any gasworks or waterworks or works connected therewith, a list of the local and road authorities in whose districts the proposed works are situated, including the clerk to the justices in cases where it is proposed to lay any pipes across county bridges.*

List of local and road authorities.

(3.) A complete list of every company, corporation, or person supplying gas or water (as the case may be) within the district and a certified copy of the notice served upon them.

List of gas or water companies and copy of notice.

(4.) A complete list of the mill-owners, etc., referred to in section 5 (2) of the Act, and a certified copy of the notice served upon them.

List of mill-owners, etc., and copy of notice.

(5.) A complete list of every owner, lessee, or occupier within 300 yards of any proposed gasworks or works for the storage of gas, and a certified copy of the notice served upon them.

List of persons within 300 yards of proposed gasworks and copy of notice.

(6.) In cases where no new gasworks are proposed, a plan showing the site of the existing gasworks and the proposed enlargement thereof (if any).

Additional plan.

(7.) A statement of the existing capital of the promoters, showing the amount authorised, raised, and expended, and in the case of applications for additional capital, a statement setting forth, under separate heads, all the purposes for which the additional capital is required. (This statement must be furnished whether the promoters have parliamentary powers or not.)

Statement of capital.

(7a.) A copy of the printed accounts presented to the shareholders for the half-year next preceding the application.

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* County bridges are now vested in county councils.

Rules.

Description of land.

(8.) A description of the land (if any) which the promoters propose to purchase for the purposes of gasworks or waterworks. (The contracts for the purchase of all the lands required must be produced at the time fixed for proving compliance with the Act and these rules.)

Memorandum and articles of association, etc.

(9.) A list of every provisional order or Act of Parliament (if any) of the promoters; and where the promoters are a company incorporated under the Companies Act, 1862, a printed copy of the memorandum of association, articles of association, and any registered special resolution of the company; and in the case of a company incorporated in any other manner, a copy of every deed or instrument of settlement or incorporation.

Fee.

(10.) A fee of £35, by cheque payable to an "Assistant Secretary of the Board of Trade." (This fee will not necessarily be taken to cover the costs of inquiries or other matters arising out of the application; with respect to costs in such matters, security must be given from time to time by the promoters as the Board of Trade may require.)

Form of draft provisional order.

Rule XII.—The draft provisional order must be in triplicate, and must have the land proposed to be taken scheduled thereto. It must be printed on one side only of the page of paper, so as to leave the back of the page blank, and any schedule annexed must begin a new page. The names and addresses of the agents of the provisional order must be printed on the outside of the draft order, and there should be a notice at the end of it stating that objections are to be addressed to the assistant secretary of the railway department of the Board of Trade on or before the 15th January next ensuing, that copies of the objections must at the same time be sent to the promoters, and that in forwarding such objections to the Board of Trade the objectors or their agents should state that a copy of the same has been sent to the promoters or their agents.

Resolution as to additional capital.

Rule XIII.—In the case of any application for additional capital by promoters having parliamentary powers, a certified copy of the resolution of three-fourths of the shareholders present and voting at a special general meeting approving of the application, together with a copy of the notice convening the meeting, must be furnished before the application can be entertained.

Resolutions as to agreements and amalgamations.

Rule XIV.—When an application includes power for two or more companies supplying gas or water (as the case may be) in any district to enter into agreements jointly to furnish gas or water, and to amalgamate their undertakings, certified copies of the resolutions passed by three-fourths of the shareholders of each company present and voting at a special general meeting called for the purpose of considering the application, with a copy of the notice convening the meeting, must be furnished before the application can be entertained.

PROOFS OF COMPLIANCE WITH THE ACT AND RULES.

Proofs of compliance with Act and rules.

Rule XV.—The agents must be prepared to prove compliance with the provisions of the Act and these rules by the 15th January, and all such proofs must be completed on or before the 22nd February. Six days' notice will be given of the day and hour at which the agents are to attend for the purpose at the Board of Trade, and printed forms of proof will accompany the notice. These forms should be filled up by the agents, and brought with the requisite documents to the department at the time fixed for proof.

If any local or road authority, railway, tramway, or canal company, or any other company, body, or person, desires to have any clauses or other amendments inserted in the order, they must deliver the same to the agents for the order, and also to the Board of Trade, on or before the 8th February: Provided that no such delivery shall prejudice the right of the party making such delivery to oppose the order.

On or before the 22nd February the agents must give to the Board of Trade a filled up draft printed order (in duplicate), containing in manuscript all such clauses or other amendments as have been agreed upon.

If any of the clauses or other amendments which have been delivered to the agents are not settled with the consent of both parties, the agents must, so far as they can, on or before the 22nd February, show what are the amendments, if any, which each party would be willing to accept.

After the 22nd February no further proposals for clauses will be entertained by the Board of Trade.

DEPOSIT AND ADVERTISEMENT OF ORDER AS MADE.*

[*Here follows s.* 8 *and Part IV. of Schedule B., for which see ante, pp.* 796, 803. *As regards the price of the printed copies of the provisional order, the Board of Trade add the following note: " The Board of Trade consider that the price to be here inserted should not be more than one shilling."*]

Proofs of deposit and advertisement of order as made.

Rule XVI.—When a provisional order has been made, and before it is introduced into the confirmation Bill, the promoters will be required to submit to the Board of Trade the following proofs, viz.:—

(1.) The receipt of the clerk of the peace or sheriff clerk, or to prove by affidavit the deposit of the order with such officer as required by Part IV. of Schedule B. to the Act.

(2.) A copy of the local newspaper containing the advertisement of the order. This advertisement must have a short heading stating that the order has been made by the Board of Trade under the Gas and Water Works Facilities Act, 1870, previous to its being introduced into a confirmation Bill, and must also state the office where printed copies of the order can be obtained, which must be the office named in the original advertisement of the application for the order.

(3.) Proof must also be given that the advertised order is a correct copy of the order delivered by the Board of Trade to be advertised, that it was inserted in the newspaper in which the original advertisement of the application for the order was published, and that a sufficient number of printed copies of the order have been deposited for sale at the office named in the original advertisement, with a statement of the price for which they may be obtained.

Printed forms for these proofs will be furnished by the Board of Trade when the order is sent to the promoters to be advertised, and these must be filled up by the promoters and brought or forwarded to the department with the requisite documents as soon as possible after the advertisement and deposit have been made.

PROLONGATION OF TIME FOR COMMENCEMENT OR COMPLETION OF GAS AND WATER WORKS.

Prolongation of time for commence-

The Board of Trade, under the powers conferred upon them by s. 11 of the Gas and Water Works Facilities Act, 1870, have made the following rules

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* Sect. 9 of the Act requires that the order as made shall be deposited and advertised *not later* than 25th April.

Rules.

ment or completion of works.

with respect to applications for a prolongation of time for the commencement or the completion of the works authorised by any order made under the above-named Act:

1. The application should be in the form of a memorial setting forth the grounds on which the application is made, and must be made *at least one month before* the expiration of the time prescribed for the commencement or the completion of the works, as the case may be.
2. The undertakers of any gas or water undertaking authorised by any order, who intend to apply to the Board of Trade for a prolongation of the time limited for the commencement or the completion of the works authorised by such order, shall publish by advertisement, once at least in two successive weeks, in some one and the same newspaper circulating in the district affected by such order, a notice of their intention to apply to the Board of Trade for a prolongation of time.
3. The notice must state the period to which it is proposed to prolong the time limited for the commencement or the completion of the works, as the case may be, and must contain a notification that all persons desirous of making any representation to the Board of Trade, or of bringing before them any objection respecting the application, may do so by letter addressed to the assistant secretary of the railway department of the Board of Trade, on or before a day to be named in the advertisement, being not less than twenty-one days from the date of the first publication of the advertisement, and that copies of their representations or objections are at the same time to be sent to the undertakers.
4. A similar notice must be delivered to every local and road authority, and to every company, corporation, or person supplying gas or water, as the case may be, within the district affected by the order, and in the case of water which is authorised by an order to be abstracted from a stream, to the owners, lessees, and occupiers of mills, manufactories, and other works using the water of such stream, to whom notice was required to be given of the application for such order, *before* the second publication of the notice. Copies of newspapers containing the notice, and a statement that a copy of it has been duly served on all the parties above mentioned, as required by these rules, must be sent to the Board of Trade with the application.
5. Before the Board of Trade comply with the application they will impose such conditions (if any) as they think fit.

Board of Trade (Railway Department),
August, 1886.

COURTENAY BOYLE.

REGULATIONS OF THE LOCAL GOVERNMENT BOARD[*]

IN REGARD TO PROVISIONAL ORDERS.

(Dated September 7th, 1891.)

Gas and Water Works Facilities Act, 1870, *and Gas and Water Works Facilities Act*, 1870, *Amendment Act*, 1873.

To THE URBAN SANITARY AUTHORITIES for the Urban Sanitary Districts in England and Wales;

And to all others whom it may concern.

Whereas by section 5 of the Gas and Water Works Facilities Act, 1870, it is enacted that the undertakers intending to make application for a provisional order in pursuance of that Act, shall (amongst other things), on or before the 30th day of the month of November next before their application, deposit the documents described in Part II. of Schedule B. to that Act, according to the regulations therein contained;

And whereas by Part II. of Schedule B. aforesaid it is provided that the undertakers shall deposit (amongst other things) a proper plan and section of the proposed new works, if any, such plan and section to be prepared according to such regulations as may from time to time be made by the Board of Trade in that behalf;

And whereas by section 6 of the said Act it is further enacted that the Board of Trade shall consider the application for any such provisional order as aforesaid, and also any objection thereto that may be lodged with them on or before such day as they from time to time appoint, and shall determine whether or not the undertakers may proceed with the application;

And whereas by section 14 of the Gas and Water Works Facilities Act, 1870, Amendment Act, 1873, it is enacted as follows:

"The Board of Trade may from time to time make, and when made, may rescind, annul, or add to, rules with respect to the following matters:

"The proceedings to be had before the Board under the Gas and Water Works Facilities Act, 1870, or this Act; and

"As to any other matter or thing in respect of which it may be expedient to make rules for the purpose of carrying the said Act or this Act into execution.

"Any rules made in pursuance of this section shall be deemed to be within the powers conferred by the said Act or this Act, and shall be of the same force as if enacted in the said Act or this Act, and shall be judicially noticed.

"Any rules made in pursuance of this section shall be laid before Parliament within three weeks after they are made, if Parliament be then sitting, and if Parliament be not then sitting, within three weeks after the beginning of the then next session of Parliament."

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[*] These regulations apply exclusively to the case of an urban authority applying for a provisional order for a gas undertaking under the powers of s. 161 of the Public Health Act, 1875. The corresponding regulations for Ireland under the Public Health (Ireland) Act, 1878, and now in operation, are dated January 27th, 1882, and may be obtained from the secretary of the Local Government Board for Ireland, Custom House, Dublin,

Regulations. And whereas by section 161 of the Public Health Act, 1875, it is enacted that—

Where an urban sanitary authority may under that Act themselves undertake to supply gas for the whole or any part of their district, a provisional order authorising a gas undertaking may be obtained by such authority, under and subject to the provisions of the Gas and Water Works Facilities Act, 1870, and any Act amending the same; and in the construction of the said Act the term "the undertakers" shall be deemed to include any such urban sanitary authority: Provided that, for the purposes of that Act, the Local Government Board shall throughout the said Act be deemed to be substituted for the Board of Trade.

And whereas by an order dated the 26th of October, 1877, we, the Local Government Board, prescribed Regulations with regard to the proceedings to be taken by urban sanitary authorities in connection with applications made by them for provisional orders as aforesaid, and by a further order dated the 1st of November, 1877, we appointed the day on or before which objections to any such applications should be lodged with us;

And whereas it is expedient that further provision in the matter should be made as herein-after mentioned:

Now therefore, in pursuance of the above-cited provisions, and by virtue of the several other authorities enabling us in this behalf, we hereby rescind the said orders dated respectively the 26th of October, 1877, and the 1st of November, 1877, and in lieu thereof we do hereby make the following regulations and rules:

1. The notice in writing and the notice by advertisement required to be given by sub-sections 1 and 2 of section 5 of the Gas and Water Works Facilities Act, 1870, must state that every company, corporation, or person referred to therein, or any other person desirous of bringing before the Local Government Board any objection respecting the application of the urban sanitary authority for a provisional order, may do so by letter addressed to the secretary of the said Board, to be lodged with the said Board on or before the 15th of January next ensuing the making of such application, and that a copy of such objection must, at the same time, be sent to the clerk to such urban sanitary authority.

2. The map required to be deposited on or before the 30th of November, by Schedule B., Part II., of the said Act, must be on a scale of not less than six inches to the mile, and must show distinctly the situation of the land proposed to be used for the manufacture of gas, or of residual products arising in the manufacture of gas, in relation to the adjoining lands and premises, and to the urban sanitary district generally. The plan and section of any proposed new works required to be deposited on or before the day aforesaid by the said part of the said schedule must be on a scale of not less than one inch to fifty feet, and must, as far as practicable, show the general arrangement, elevation, and character of the proposed works.

   In any case where any part of the works would be situate on lands where the ordinary spring tide flows, the site of such lands must be coloured blue on the map and plan. A copy of such map and plan, coloured in like manner, and marked "Tidal waters," shall be deposited at the Board of Trade on or before the date last aforesaid.

Regulations.

3. Where the application is for an extension of gasworks a map or plan of the existing gasworks on a scale of not less than six inches to the mile must accompany the memorial to be deposited with the Local Government Board.

4. (i.) The draft of the provisional order required to be deposited with the Local Government Board on or before the 23rd of December must be on foolscap paper, and printed or lithographed on one side only.

(ii.) The name of the urban sanitary authority, together with the name and address of the clerk to such authority, must be shown on the back of the last page of every such draft provisional order, which must contain a notice at the end of it, stating that any objections are to be sent to the Local Government Board in the manner aforesaid.

(iii.) Three copies of the draft order must be deposited with the Local Government Board.

5. The urban sanitary authority must prove compliance with the provisions of—

(i.) The Gas and Water Works Facilities Act, 1870, section 5, subsection (1);

(ii.) The Gas and Water Works Facilities Act, 1870, Schedule B., Part I., Paragraphs (3) and (4);

(iii.) The Gas and Water Works Facilities Act, 1870, Schedule B., Part II., Paragraph (2);

(iv.) The Gas and Water Works Facilities Act, 1870, Schedule B., Part III., Paragraph (2);

(v.) This order:

by an affidavit or statutory declaration to be made by the clerk or some other officer of the urban sanitary authority, and to be deposited with the Local Government Board on or before the 1st of January next ensuing the making of the application.

Copies of the notices, together with copies of the newspapers and London Gazette containing the notice by advertisement, and the receipt of the clerk of the peace (if any) for the documents deposited with him, must be annexed to the affidavit or declaration as exhibits.

Such affidavit or declaration must also state that there is not any company or person authorised by or in pursuance of any Act of Parliament, or any order confirmed by Parliament, to supply gas for public and private purposes, supplying gas within any part of the district of such urban sanitary authority, or within the part of the district which the urban sanitary authority propose to supply, as the case may be.

6. On or before the 1st of January there must be deposited with the Local Government Board an affidavit, showing that the requirements of the Standing Orders of both Houses of Parliament have been complied with, as regards the deposit with the clerk of the Parliaments and at the Private Bill Office of duplicates of every map, plan, section, and book of reference deposited with the Local Government Board, and as regards the deposit with the Board of Trade of the copy of the map and plan before referred to. The affidavit must be sworn by the clerk or some other officer of the urban sanitary authority and by the person by whom the deposits were made.

Regulations.

7. Any objection to an application by an urban sanitary authority for a provisional order as aforesaid must be lodged with the Local Government Board on or before the 15th of January next ensuing the making of the application by the urban sanitary authority.

8. Every memorial, objection, and other such document deposited or lodged with the Local Government Board must be on foolscap paper.

9. When an objection is lodged with the Local Government Board, the objector or his agent must state that he has at the same time forwarded a copy of such objection to the urban sanitary authority.

10. When a provisional order has been issued by the Local Government Board the urban sanitary authority must, within fourteen days after the day on which the same shall have been sent to them by the Local Government Board, transmit to the said Board an affidavit or statutory declaration, made by the clerk or some other officer of the urban sanitary authority, proving that the provisional order was published on or before the 25th of April, in conformity with paragraph 3 of Schedule B., Part IV., of the Gas and Water Works Facilities Act, 1870, and that paragraphs 1 and 2 of the said part of that schedule have been complied with.

The receipt of the clerk of the peace (if any) for the copies of the provisional order deposited with him, and copies of the provisional order and of the newspaper containing the advertisement of such order, must be annexed to the affidavit or declaration as exhibits.

11. Every statutory declaration and affidavit under these regulations and rules must be made or sworn before a justice of the peace or a commissioner for oaths, and must be duly stamped.

Given under the seal of office of the Local Government Board, this 7th of September, in the year 1891.

(L.S.)

HENRY MATTHEWS,
One of the Ex-officio Members of the Local Government Board.

S. B. PROVIS,
Assistant Secretary.

POWERS OF LOCAL AUTHORITIES IN ENGLAND AND WALES WITH REFERENCE TO GAS AND WATER SUPPLY.

I.—GAS SUPPLY.

PROVISIONS OF THE PUBLIC HEALTH ACT, 1875.

(38 & 39 Vict. c. 55.)*

Power to compel paving, etc., of private streets.

150. Where any street within any urban district (not being a highway repairable by the inhabitants at large) or the carriageway footway or any other part of such street is not sewered levelled paved metalled flagged channelled and made good *or is not lighted to the satisfaction of the urban authority,* such authority may, by notice addressed to the respective owners or occupiers of the premises fronting adjoining or abutting on such parts thereof as may require to be sewered levelled paved metalled flagged or chanelled, *or to be lighted,* require them to sewer level pave metal flag channel or make good *or to provide proper means for lighting the same* within a time to be specified in such notice.

Before giving such notice the urban authority shall cause plans and sections of any structural works intended to be executed under this section, and an estimate of the probable cost thereof, to be made under the direction of their surveyor, such plans and sections to be on a scale of not less than one inch for eighty-eight feet for a horizontal plan, and on a scale of not less than one inch for ten feet for a vertical section, and, in the case of a sewer, showing the depth of such sewer below the surface of the ground: such plans sections and estimate shall be deposited in the office of the urban authority, and shall be open at all reasonable hours for the inspection of all persons interested therein during the time specified in such notice; and a reference to such plans and sections in such notice shall be sufficient without requiring any copy of such plans and sections to be annexed to such notice.

If such notice is not complied with, the urban authority may, if they think fit, execute the works mentioned or referred to therein; and

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* The corresponding powers and duties with regard to Ireland are enacted in the Public Health (Ireland) Act, 1878 (41 & 42 Vict. c. 52), ss. 28, 80 and 81, which follow substantially the wording of ss. 150, 161 and 162 of this Act.

Sect. 150. may recover in a summary manner the expenses incurred by them in so doing from the owners in default, according to the frontage of their respective premises, and in such proportion as is settled by the surveyor of the urban authority, or (in case of dispute) by arbitration in manner provided by this Act; or the urban authority may by order declare the expenses so incurred to be private improvement expenses.

The same proceedings may be taken, and the same powers may be exercised, in respect of any street or road of which a part is or may be a public footpath or repairable by the inhabitants at large as fully as if the whole of such street or road was a highway not repairable by the inhabitants at large.

By s. 4 the word "street" includes any highway and any public bridge (not being a county bridge), and any road, lane, footway, square, court, alley or passage, whether a thoroughfare or not. The portion of this section relating to turnpike roads is repealed by the Statute Law Revision Act, 1898 (61 & 62 Vict. c. 22). As to the effect of the use of the word "include" in such a definition, see *ante*, p. 161.

The powers of s. 150 (other than the power of sewering) may be put in force a second time if the street has not been declared a highway under this section (*Barry and Cadoxton L. B.* v. *Parry*, [1895] 2 Q. B. 110).

Power to declare private streets when sewered, etc., to be highways.

152. When any street within any urban district not being a highway repairable by the inhabitants at large has been sewered, levelled, paved, flagged, metalled, channelled, and made good, *and provided with proper means of lighting* to the satisfaction of the urban authority such authority may, if they think fit, by notice in writing put up in any part of the street, declare the same to be a highway, and thereupon the same shall become a highway repairable by the inhabitants at large; and every such notice shall be entered among the proceedings of the urban authority. Provided that no such street shall become a highway so repairable, if within one month after such notice has been put up the proprietor or the majority in number of proprietors of such street, by notice in writing to the urban authority, object thereto, and in ascertaining such majority joint proprietors shall be reckoned as one proprietor.

Public Health Act, 1890.

Where the Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59) has been adopted, s. 152 of the Act of 1875 is repealed, and new provisions are substituted.

Private Street Works Act, 1892.

By the Private Street Works Act, 1892 (55 & 56 Vict. c. 57), it is provided that the urban authority may themselves undertake, in the first instance, the work contemplated by s. 150. Section 6 (1) of that Act provides—

> "Where any street or part of a street is not sewered, levelled, paved, metalled, flagged, channelled, made good, and lighted to the satisfaction of the urban authority, the urban authority may from time to time resolve with respect to such street, or part of a street, to do any one or more of the following works (in this Act called private street works); that is to say, to sewer, level, pave, metal, flag, channel, or make good, or to provide proper means for lighting such street or part of a street; and the expenses incurred by the urban authority in executing private street works shall be apportioned (subject as in this Act mentioned) on the premises, fronting, adjoining, or abutting on such street or part of a street. Any such resolution may include several streets or parts of streets, or may be limited to any part or parts of a street."

This Act of 1892 may be adopted by any urban sanitary authority (s. 2), and by s. 4 the Local Government Board may declare that the provisions contained in the Act shall be in force in any rural sanitary district, or any part thereof.

Powers of urban authority for lighting their district.
12 & 13 Vict. c. 94, s. 8.

161. Any urban authority may contract with any person for the supply of gas or other means of lighting the streets, markets, and public buildings in their district, and may provide such lamps, lamp-posts, and other materials and apparatus as they may think necessary for lighting the same.

Where there is not any company or person (other than the urban authority) authorised by or in pursuance of any Act of Parliament, or any order confirmed by Parliament, to supply gas for public and private purposes, supplying gas within any part of the district of such authority, such authority may themselves undertake to supply gas for such purposes or any of them throughout the whole or any part of their district; and if there is any such company or person so supplying gas, but the limits of supply of such company or person include part only of the district, then the urban authority may themselves undertake to supply gas throughout any part of the district not included within such limits of supply.

Where an urban authority may under this Act themselves undertake to supply gas for the whole or any part of their district, a provisional order authorising a gas undertaking may be obtained by such authority under and subject to the provisions of the Gas and Water Works Facilities Act, 1870, and any Act amending the same; and in the construction of the said Act the term "the undertakers" shall be deemed to include any such urban authority: Provided that for the purposes of this Act the Local Government Board shall throughout the said Act be deemed to be substituted for the Board of Trade.

The effect of the above section is to prevent an urban authority from undertaking a gas supply to their district where there is a statutory company; but there is nothing to prevent an urban authority from obtaining a provisional order from the Board of Trade for supplying electric light under the Electric Lighting Acts, 1882—1888. In *Fareham L. B. and Fareham Electric Light Co.* v. *Smith* (1891), 7 T. L. R. 443, CHITTY, J., held that the restrictions contained in the second paragraph of s. 161 did not apply to lighting by other means than gas.

The question has been raised, in view of the words "may provide such lamps . . . as they may think necessary for lighting," whether an urban authority can themselves under the section generate or manufacture electricity for the purpose of lighting the streets, markets, and public buildings in their district. The Local Government Board having consulted the law officers of the Crown upon the point state that they are advised that an urban authority can, under s. 161, undertake the distribution, for purposes of public lighting, of electricity supplied to them by other parties, and for that purpose may break up the streets, but that, unless a provisional order is obtained under the Public Health Act and the Electric Lighting Acts, the urban authority are not empowered to generate or manufacture electricity.

It would seem that a local authority to whom the undertaking of a company supplying gas under statutory powers has been transferred is in the same position as the company for the purposes of this section. See *Wolverhampton* (*Corporation of*) v. *Bilston* (*Commissioners of*), [1891] 1 Ch. 315.

The statute 12 & 13 Vict. c. 94, referred to in the marginal note of this section, is the Public Health Supplemental Act, 1849, repealed by s. 343 of the Act of 1875. Section 8 authorised local boards of health to contract for public lighting.

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NOTE.

The streets lighted under s. 161, *supra*, need not necessarily be highways repairable by the inhabitants at large. See the note under s. 150, *ante*, p. 818.

Discretion as to position of lamps.

The local authority have a discretion where to erect lamp-posts, and the proper exercise of their discretion will not be interfered with at the suit of adjoining owners, even though they complain of the obstruction by such lamp-posts of the access to their premises (*Chaplin* v. *Westminster Corporation*, [1901] 2 Ch. 329; 65 J. P. 661).

Companies without statutory powers.

It will be observed that the section gives no protection to gas companies who are not regulated by parliamentary powers. The Local Government Board have stated, however, in several instances that, although there is no insuperable difficulty in the way of the issue of a provisional order enabling an urban district council to set up and maintain gasworks in opposition to an existing company, and without purchasing their undertaking, the Board would not be disposed to issue a provisional order for that purpose unless some very exceptional reasons were shown for the application.

Companies not supplying gas.

It will be observed also that the statutory company must be actually supplying gas within the district, as well as empowered by their Act or order to do so. In a case in which part of the district of an urban district council who were applying for a provisional order was found to be within the gas limits of a council of a neighbouring borough, though gas had never been supplied within the area, the Local Government Board required the observations of the town council upon the subject of the application, and eventually inserted a provision in the order to the effect that the town council's powers should not be prejudiced or affected if at the expiration of five years from the passing of the confirming Act the urban district council were not furnishing, or prepared on demand to furnish, a supply of gas in the area.

Regulations of Local Government Board.

The Regulations of the Local Government Board as to provisional orders under the Gas and Waterworks Facilities Acts are contained in a General Order dated September 7th, 1891, and set out at p. 813, *ante*.

Sects. 161 and 162 are re-enacted almost *verbatim* in the Public Health (Ireland) Act, 1878 (41 & 42 Vict. c. 52), ss. 80, 81.

See also the Gas and Water Works Facilities Acts set out with notes, *ante*, pp. 787 *et seq.*

As to Scotland, see Burghs Gas Supply (Scotland) Act, 1876 (39 & 40 Vict. c. 49), s. 21.

The Public Health Act, 1875, further provides:

Local Government Board may invest rural authority with powers of urban authority.

> 276. The Local Government Board may, on the application of the authority of any rural district, or of persons rated to the relief of the poor, the assessment of whose hereditaments amounts at the least to one-tenth of the net rateable value of such district, or of any contributory place therein, by order to be published in the London Gazette, or in such other manner as the Local Government Board may direct, declare any provisions of this Act in force in urban districts to be in force in such rural district or contributory place, and may invest such authority with all or any of the powers, rights, duties, capacities, liabilities, and obligations of an urban authority under this Act, and such investment may be made either unconditionally or subject to any conditions to be specified by the board as to the time, portion of the district, or manner during at and in which such powers, rights, duties, liabilities, capacities, and obligations are to be exercised and attached: Provided, that an order of the Local Government Board, made on the application of one-tenth of the persons rated to the relief of the poor in any contributory place, shall not invest the rural authority with any new powers beyond the limits of such contributory place.

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NOTE.

The Local Government Board have issued many orders under the last-mentioned section empowering rural authorities to undertake (by contracting for) the lighting of streets and public places in rural parishes. An application for such an order should be by resolution of the rural district council, of which a copy should be forwarded to the Board with a short statement of the grounds upon which the application is made, and explaining the arrangements which are proposed for lighting the particular parish or parishes referred to in the resolution. The lighting need not necessarily be by gas.

Seeing that under the Lighting and Watching Act, 1833, action may also be taken parochially for the lighting of rural parishes, the clerk should state whether that Act has been adopted in the area in which the rural district council propose to act. In this case the application must extend to s. 163, and it must be explained why it is proposed to supersede the existing lighting authority (parish council or inspectors), and what is their attitude towards the proposal.

Orders of the Local Government Board authorising the lighting of rural parishes by the district council confer only the powers of the first paragraph of s. 161 relating to contracts for the supply of gas or other illuminant for lighting streets, etc. The Board point out that there are practical difficulties which preclude rural district councils from carrying on a gas undertaking even if they were invested with power to establish or purchase one. The difficulty arises, not in conferring powers under ss. 161 and 162, but from the fact that, in addition to such powers, an urban authority, in ordinary cases, require the powers which are given by a provisional order under the Gas and Water Works Facilities Acts before they can manufacture and supply gas; and in the case of a rural district council there is no express statutory authority enabling them to apply for such an order. For these reasons the board regard themselves as unable to entertain applications of rural district councils for urban powers under the latter part of s. 161 or under s. 162.

The difficulty is the same when a rural district council propose to take gas in bulk from some neighbouring council or company and distribute it to private consumers as well as use it for public purposes.

Under the powers of s. 161, *supra*, the Local Government Board, by order, declared that the provisions of the first paragraph of s. 161 should be in force within certain portions of a rural sanitary district, and invested the rural sanitary authority with all the powers, rights, capacities, etc., of an urban sanitary authority "under those provisions" within such portions of the district. The rural authority incurred expenses under this order in obtaining a supply of gas and lamp-posts for lighting the public roads and streets in the township of Great Lever, and treated them as general expenses under ss. 229 of the Act. A poor rate having been made to defray the expenses, a railway company was assessed in respect of the full rateable value of its property, which consisted of land occupied and used as a railway. It was held by the House of Lords that upon the true construction of the order the rural authority was invested only with the power of an urban authority to incur lighting expenses under the provisions of the first paragraph of s. 161, and not with the rating powers applicable to an urban authority under the Act; that the expenses were rightly treated as general, and not as special expenses under s. 229; and that the company was not entitled to be rated under s. 211 of the Act, and in proportion of one-fourth part only of the rateable value (*L. & Y. Rail. Co.* v. *Assessment Committee of Bolton Union* (1890), 15 App. Cas. 323). See also *R.* (*Thomas Potts*) v. *Local Government Board for Ireland*, [1905] 2 I. R. 324, a case decided under the Public Health (Ireland) Act, 1878, s. 229, which section corresponds to s. 229 of the Public Health Act, 1875.

It should be noted, however, that in orders putting the first paragraph of this section in force in a rural parish the Local Government Board usually insert a provision that the expenses of the rural district council in

Sect. 161. executing the powers shall be chargeable as special expenses upon the parish.

NOTE.

Urban sanitary authority now to be called urban district council.

Rural district councils in place of rural sanitary authorities.

By the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 24, it is enacted that urban sanitary authorities shall be called urban district councils, and their districts shall be called urban districts; the style or title of the corporation or council of a borough remaining unaltered. It is further enacted that for every rural sanitary district there shall be a rural district council, whose district shall be called a rural district; and further, that the expression "district council" shall include the council of every urban district, whether a borough or not. As to the constitution of district councils in urban districts not being boroughs, see s. 23; and as to the constitution of rural district councils, see s. 24. By s. 25, the powers, duties, and liabilities of the rural sanitary authority and of the highway authority are transferred to the district council. See, further, notes to s. 163, p. 824. As to Ireland, see Local Government (Ireland) Act, 1898 (61 & 62 Vict. c. 37), creating urban district councils.

As to liability to assessment to income tax, see *Dillon* v. *Corporation of Haverfordwest*, [1891] 1 Q. B. 475; and Glasgow cases cited *ante*, p. 205.

Liability of local authority for negligence.

Where trustees of a public road were empowered to place lamps along the road, but failed to do so, it was held that they were not liable in an action by a person who had been injured by reason of the road not being lighted (*Harris* v. *Baker* (1815), 4 M. & S. 27). In a case where an accident happened to a brougham through running against a lamp-post at a dangerous point, the Court held that the failure to light the lamp was not negligence, there being no statutory obligation to do so (*Mellor* v. *Heywood* (*Mayor, etc. of*) (1884), 48 J. P. 148).

Harris v. *Baker, supra*, was followed in *Cowley* v. *Newmarket Local Board*, [1892] A. C. 345; 56 J. P. 805. By s. 130 of the Metropolis Management Act, 1855, vestries have a discretion as to the time during which public street lamps shall continue lighted, and when they have *bonâ fide* exercised their discretion in that respect they are not liable for any accident, whether the result of nonfeasance or misfeasance, caused through the lights having been turned out at the hour they have ordered (*Young* v. *St. Mary, Islington* (*Vestry of*) (1896), 60 J. P. 821). On the other hand, where the defendants, who were both the highway and the lighting authority, had erected a post at the entrance and in the centre of a footpath to prevent cattle straying upon it, and had placed a lamp near the post, which they were in the habit of lighting at night, and the plaintiff, who was passing along the footpath at night, when the lamp was out or not lighted, came against the post and was injured, it was held that the defendants were liable (*Lamley* v. *East Retford* (*Mayor, etc. of*) (1891), 55 J. P. 133). See also *Martin* v. *Blackburn Corporation* (1907), 71 J. P. N. 124 (a county court case).

Power for sale of undertaking of gas company to urban authority.

162. For the purpose of supplying gas within their district or any part thereof, either for public or private purposes, any urban authority may (with the sanction of the Local Government Board) buy, and the directors of any gas company, in pursuance, in the case of a company registered under the Companies Act, 1862, of a special resolution of the members passed in a manner provided by that Act, and in the case of any other company, of a resolution passed by a majority of three-fourths in number and value of the members present, either personally or by proxy, at a meeting specially convened with notice of the business to be transacted, may sell and transfer to such authority, on such terms as may be agreed on between such authority and the company, all the rights powers and privileges and all or any of the lands premises works and other property of the company, but subject to all liabilities attached to the same at the time of such purchase.

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NOTE.

See note to preceding section as to the practice of the Local Government Board in the case of applications of rural district councils for urban powers for the purchase and carrying on of gas undertakings.

Compulsory powers for the purchase of gas undertakings cannot be obtained by means of a provisional order under the Gas and Water Works Facilities Acts. An Act of Parliament is necessary.

The above section refers to the purchase of gas undertakings by agreement, whether the company are or are not carrying on their works under parliamentary powers. If the company's limits exceed the limits of the local authority's district, parliamentary authority will be necessary.

If a gas company whose works are to be taken over possesses no parliamentary powers, the Local Government Board would not give their sanction to the purchase until the urban district council had obtained a provisional order under s. 161 and the Gas and Waterworks Facilities Acts, the Board's view being that without such an order, confirmed by Parliament, the council would not have the requisite powers for carrying on the undertaking, even if they purchased it.

Similar powers of selling their undertaking to local authorities are given to water companies by s. 63. See *post*, p. 870. See s. 69 of the Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), as to special resolution. Where a statute requires a definite proportion of those present to render valid any act, such proportion must be of those present and qualified to vote, whether voting or not (*In re Eynsham Ratepayers* (1849), 18 L. J. Q. B. 210; *R.* v. *Christchurch Overseers* (1857), 7 E. & B. 409).

A curious precedent is to be found in the Aldershot Gas and Water Act, 1901. That Act extended the company's limits, and by agreement a clause was inserted enacting that the existing rights and powers then vested in the district council by virtue of the above section in relation to the purchase of the company's gas undertaking should extend to and include the added limits of supply, with a proviso saving the rights of the local authority in any part of such extended limits of supply under the same section (1 Edw. 7, c. cxii. s. 7).

A gas company supplied gas in a district, a portion of which was not within their statutory limits of supply. By an agreement made between the gas company and the urban district council of the district outside the limits of supply as aforesaid, it was agreed that the company should sell, and the council should purchase, all and singular the works, pipes, mains, meters, and other gas apparatus, and all other the real and personal property (if any) and all effects of the company of whatsoever kind laid down or situate within the district, freed and discharged (as between the company and the council) from all debts, outgoings, and liabilities, and all easements, rights, powers, authorities and privileges (if any) enjoyed or exercisable by the company, at a price to be agreed upon, or, in default of agreement, to be determined by arbitration. The agreement further provided that in the case of arbitration, and in the event of the council not continuing to take a supply of gas in bulk from the company, the arbitrators should take into consideration, in fixing the purchase money, the value of any mains or pipes laid down by the company outside the district of the urban council for the purpose of supplying gas within the district of the urban council, which by reason of the sale would be rendered useless to the company. By a second agreement, terminable upon twelve months' notice, it was agreed that the council should take a supply of gas in bulk from the company. It was held that the purchase-money was to be assessed on the basis that the sale was a sale of a part of the gas company's undertaking as a going concern, including goodwill. And, further, that the arbitrator should take into consideration the contingency of the district council not continuing to take a supply of gas from the company, and should assess compensation in respect of the mains and pipes outside the district of the council provided by the company for supplying gas within such district upon that basis (*In re Hucknall Urban District Council and South*

Sect. 162. *Normanton, etc., Gas Co.* (1905), 69 J. P. 329; see also *Kingston Light, Heat, and Power Co.* v. *Kingston Corporation* (1904), 20 T. L. R. 448).

NOTE.

Lighting and Watching Act (3 & 4 Will. 4, c. 90), to be superseded by this Act.

163. Where in any place which after the passing of this Act becomes constituted or included in an urban district, or which by virtue of any order of the Local Government Board becomes subject to this enactment, the Act passed in the fourth year of the reign of King William the Fourth, intituled "An Act to repeal an Act of the eleventh year of his late Majesty King George the Fourth, for the lighting and watching of parishes in England and Wales, and to make other provisions in lieu thereof," has been adopted, the said Act shall be superseded by this Act and all lamps lamp-posts gas-pipes fire-engines hose and other property vested in the inspectors for the time being under the said Act shall vest in the authority having under this Act jurisdiction in such place.

The effect of s. 163 is twofold: (1) where the Lighting and Watching Act, 1833, has been adopted, and is in force in any rural district which, after the passing of the Act of 1875, "becomes constituted or included in an urban district," then the provisions of the Act of 1875 supersede the Lighting and Watching Act, and the "lamps lamp-posts gas-pipes fire-engines hose and other property" become vested in the authority having jurisdiction under the Public Health Act; and (2) where, under the powers of s. 276, the Local Government Board confers upon a rural authority the powers which in this respect would have been exercisable by an urban authority, then the same consequences follow.

The sections of the Lighting and Watching Act, 1833, relating to lighting, are set out, *post*, pp. 825 *et seq.*

The Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 7, provides (sub-s. (1)) that from the appointed day in every rural parish the parish meeting shall exclusively have the power of adopting (amongst other Acts) the Lighting and Watching Act, 1833; and (sub-s. (7)) that when any of the adoptive Acts is adopted for the whole or part of a rural parish after the appointed day, and the parish has a parish council, the parish council shall be the authority for the execution of the Act. See also s. 53 for certain supplemental provisions on this subject. By s. 33 (1), the Local Government Board may, on the application of the council of any municipal borough, including a county borough, or of any other urban district, make an order conferring on that council or some other representative body within the borough or district (amongst other things) any powers, duties, or liabilities of a parish council.

The Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), ss. 119, 120, contain enactments as to public lighting. This Act only applies where it is incorporated in a special Act.

The Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), provides as follows:

Transfer of powers of local authorities to municipal corporations.

> 136.—(1.) The trustees appointed or acting by or under any local Act of Parliament for the time being in force, for paving, lighting, supplying, with water or gas, cleansing, watching, regulating, or improving a borough, or any part thereof, or for providing or maintaining a cemetery or market in or for a borough, or any part thereof, whether in any such case their powers under the local Act do or do not extend beyond the borough, may, if they think fit, at a meeting called for this purpose, transfer to the municipal corporation of the borough, with the consent of the council, but not otherwise, all the rights, powers, estates, property and liabilities for the time being vested in or imposed on the trustees under the local Act.
>
> (2.) The transfer shall be made in writing under the common seal of the trustees if they are a corporation, and if not, then by deed executed

by the trustees, or by any two of them acting by their authority and on their behalf.

*NOTE.

(3.) On the transfer being made, the municipal corporation shall become and be the trustees for executing by the council the powers and provisions of the local Act; and all the rights, powers, estates, and property vested in the transferring trustees shall vest in the corporation; and all the liabilities and obligations of the transferring trustees shall be transferred to and borne by the corporation, and the transferring trustees shall be discharged therefrom.

Power for council to extend local lighting Act.

137.—(1.) Where at the passing of the Municipal Corporations Act, 1835, there was a local Act of Parliament for lighting part of a borough then incorporated, the council may, if they think fit, make an order, that any specified part of the borough not within the provisions of any such local Act shall, after a day fixed in the order, be within those provisions; and after that day the part so specified shall be within those provisions, as far as relates to lighting, or to any rate authorised to be levied for lighting.

(2.) But the part so specified shall be lighted in like manner as those parts of the borough which before the making of the order were within those provisions; and any rate raised for the purpose of defraying the expenses of lighting the part so specified shall not exceed the average expense in the pound of lighting the other parts of the borough.

Exercise of powers under local Acts.

138. Everything provided under any local Act of Parliament in force on the twentieth of August, one thousand eight hundred and thirty-six, to be done exclusively by a particular or limited number, class, or description of the members of any body corporate named in the schedules to the Municipal Corporations Act, 1835, the continuance of which was not inconsistent with the provisions of that Act, and everything provided in any such local Act to be done by the justices, or by some particular class or description, or members of such body corporate, being justices, at a court of quarter sessions, which did not relate to the business of a court of criminal or civil judicature, if the same respectively has been lawfully continued to be done up to the commencement of this Act by the council or a committee thereof shall be continued thereafter to be done by the council at a quarterly meeting, or by any three of a committee of the council appointed at such a meeting.

LIGHTING AND WATCHING ACT, 1833.

(3 & 4 WILL. 4, c. 90.)

An Act to Repeal an Act of the Eleventh Year of His late Majesty King George the Fourth, for the Lighting and Watching of Parishes in England and Wales, and to make other Provisions in lieu thereof.

[28th August, 1833.]

Preamble repealed by the Statute Law Revision (No. 2) Act, 1888 (51 & 52 *Vict. c.* 57).

Lighting and Watching Act is adoptive only.

The Lighting and Watching Act, 1833 (this mode of citation is authorised by the Short Titles Act, 1896 (59 & 60 Vict. c. 14)) does not come into operation until it has been adopted in any particular area.

Areas for which it may be adopted.

It may be adopted for any rural parish, or part of a rural parish, under the circumstances to be presently mentioned.

In urban districts, s. 161 of the Public Health Act, 1875, gives the urban authority power to light their district, and the powers of an urban authority

Preamble.

NOTE.*

under this section may be conferred by an order of the Local Government Board, under s. 276 of the Act, upon the council of a rural district in respect of any contributory place. Sect. 163 of the Act provides that where any place in which the Lighting and Watching Act, 1833, has been adopted becomes constituted or included in an urban district, or becomes subject to the section, the Act of 1833 shall be superseded by the Public Health Act, 1875, and all lamps, lamp-posts, gas-pipes, fire-engines, hose, and other property vested in the Inspectors under the Act of 1833, shall vest in the authority having, under the Public Health Act, jurisdiction in such place.

It would, therefore, be useless to adopt the Act in any rural parish for which an order of the Local Government Board is in force conferring urban powers as to lighting upon the rural district council. If, however, no such order is in force, recourse may be had to the powers of the Act if public lighting is desired in any rural district.

Mode of adoption and execution of the Lighting and Watching Act.

Prior to the year 1894 the Act was administered by lighting inspectors, but in consequence of the provisions of the Local Government Act, 1894, lighting inspectors exist only at the present time in a few rural parishes which are not entitled to a parish council, or in which the Lighting and Watching Act is in force in a portion only of a rural parish. Formerly the Act was adopted at a meeting of ratepayers, but since the Local Government Act, 1894, the adoption must in every case be by the parish meeting (s. 7). The Act may be adopted for the whole or part of a parish (in this event the parish meeting being held for such part only), and either in its entirety or only so far as it relates to lighting or watching (see Lighting and Watching Act, 1833, ss. 71, 73; Local Government Act, 1894, s. 7 (4)). A majority consisting of two-thirds of the parochial electors present at the meeting is required (Lighting and Watching Act, ss. 8 and 16; Local Government Act, s. 7 (2)). A poll may be demanded by any one parochial elector (Local Government Act, 1894, First Schedule, Part I., rules (6) (7)). On a poll, a clear majority of the total number of the parochial electors of the parish (or part of parish if adoption is sought for such part only) must vote, and two-thirds of the votes given must be in favour of adoption (Lighting and Watching Act, 1833, ss. 12, 73; Local Government Act, 1894, s. 7 (2)). When this Act is adopted for the whole of a rural parish, and the parish has a parish council, the parish council is the authority for the execution of the Act (Local Government Act, 1894, s. 7 (7)). When the Act is adopted in a small parish having no parish council, or for a portion of such a parish, and the parish meeting have not obtained from the county council (under s. 19 (10) of the Local Government Act, 1894) the powers of a parish council, lighting inspectors must be appointed. If a parish council is elected for a parish, and the Act is adopted after the Local Government Act, 1894, came into operation, for part only of the parish, it devolves upon the parish council to carry the Act into execution (Local Government Act, 1894, s. 7 (7), but when this is the position the parish council may be required to appoint a committee to exercise the powers of the Act (Local Government Act, 1894, s. 56 (2)). If the Lighting and Watching Act was in force at the date of the coming into operation of the Local Government Act, 1894, for an entire parish with a parish council, the parish council superseded the lighting inspectors (Local Government Act, 1894, s. 7 (5)). Where there was a previous adoption for the whole or a portion of a rural parish, which did not obtain a parish council, lighting inspectors continued as the executive authority. If the Act was in force in a part only of a parish having a parish council, the lighting inspectors, or a parish meeting held for the part of the parish when the Act was in operation, may transfer the powers, duties, and liabilities of the lighting inspectors to the parish council (Local Government Act, 1894, s. 53 (1)). If no such transfer is made, lighting inspectors continue as the executive body. The Local Government Act, 1894, also made express provision for those cases where, on that Act coming into operation, the area in which the Lighting and Watching Act was in operation extended into more than one rural parish, or was partly comprised in an urban district (see s. 53 (2)). The amount to be expended each year for the purposes of the Act must be determined by the parish meeting (Lighting and Watching

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Act, 1833, ss. 9, 18). The Local Government Act, 1894, places no restriction on expenditure for the purposes of the Lighting and Watching Act, these expenses being expressly excluded from the sixpenny limit prescribed by s. 11 (3), but see the general restriction in sub-s. (1) of s. 11, prohibiting a parish council incurring expenses or liabilities which will involve a rate exceeding threepence in the pound for any local financial year, or a loan, without the consent of a parish meeting. The parish council or the lighting inspectors, as the case may be, obtain the money required for the execution of the Act, by means of a precept or order addressed to the overseers of the poor of the parish, requiring them to levy a lighting rate (Lighting and Watching Act, 1833, s. 32). The incidence of charge of the rate was not altered by the Local Government Act, 1894 (see s. 7 (6) of that Act). See s. 33 of the Lighting and Watching Act, 1833, and the note thereunder, *infra*, as to such incidence.

Powers and provisions of the Act.

The powers exercisable under the Act, and the provisions relating to the exercise of such powers, are as follows: Lamp-posts to be put up, and lighted with "gas, oil, or otherwise (s. 45); gas pipes not to be laid on private property without consent (s. 46); owners of private grounds may alter position of pipes (s. 47); provisions against escape of gas, washings of gasworks, etc. (ss. 48—50); gas pipes to be laid four feet from water pipes whenever the width of the carriageway will allow, and in a particular manner (s. 51); provisions as to contamination of water (ss. 52, 53); liability to be indicted for nuisance (s. 54); provisions dealing with wilful and with accidental injury to public lamps (ss. 55, 56); power to contract "with any person, company, or companies whatsoever, for lighting the same streets, roads, and other places, or any of them, or any part thereof, either with oil or with gas, or with any other material or in any other manner whatsoever, or for furnishing lamps, lamp-irons, lamp-posts, watch-boxes, posts, chains, pales, rails, and other things necessary for the purposes aforesaid, or any materials for the same" (s. 57). See the sections set out *post*.

Power to collect rates.

33. The overseers aforesaid shall, for the purpose of collecting, raising, and levying the rate necessary for the purposes of this Act, proceed in the same manner, and have the same powers, remedies, and privileges, as for levying money for the relief of the poor in the said parish: Provided always, that owners and occupiers of houses, buildings, and property (other than land) rateable to the relief of the poor in any such parish shall be rated at and pay a rate in the pound three times greater than that at which the owners and occupiers of land shall be rated at and pay for the purposes of this Act: Provided also, that the total amount of the sum to be collected, raised, and levied for the purposes of this Act within any one year shall not exceed such sum as shall have been agreed on by the inhabitants of the said parish as aforesaid; and that the said sum shall be assessed upon the full and fair annual value to which lands, houses, buildings, and other property within the said parish shall be rated or shall be rateable according to the last valuation made and acted upon for the rate for the relief of the poor within the said parish.

Certain formal words omitted from this and all the other sections which follow, are repealed by the Statute Law Revision (No. 2) Act, 1888 (51 & 52 Vict. c. 57).

The Local Government Act, 1894 (56 & 57 Vict. c. 73), does not alter the incidence of charge of any rate levied under the Lighting and Watching Act (s. 7 (6)).

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NOTE.

Where the Lighting and Watching Act, 1833, having been adopted, a rate was made, and the justices refused to enforce it by issuing their warrant of distress unless affirmative evidence was offered of the adoption of the Act, the court granted a mandamus, holding that, in the absence of evidence to show the contrary, the justices ought to assume that the Act had been legally adopted (*R.* v. *JJ. of Frodsham*, Jl. of G. L., May 16th, 1893, vol. 61, p. 893; and see *R.* v. *Oxfordshire JJ.* (1854), 22 L. T. 219).

The assessment of property other than land should be three times *as great* as the assessment on land (*R.* v. *Somerset JJ.* (1858), 22 J. P. 431).

For the purpose of a rate under the Lighting and Watching Act, 1833, coal mines are not "land," but are "property (other than land) rateable to the relief of the poor" within the meaning of s. 33, and are therefore rateable on the higher scale, though they cannot derive any benefit from the rate (*Thursby* v. *Churchwardens and Overseers of Briercliffe-with-Extwistle*, [1895] A. C. 32). As to the rating under the same section of a brickfield, with engine-houses and other buildings upon it, see *Crayford Overseers* v. *Rutter*, [1897] 1 Q. B. 650. Sheds erected for the protection of engines used in connection with the working of a coal mine were, under the similar words of an earlier Act, held to be rateable as buildings (*Brown* v. *Granville* (*Lord*) (1833), 3 Moo. & S. 453).

"Property" in this section means things *ejusdem generis* with houses and buildings, and does not include a canal and towing path (*R.* v. *Neath Overseers* (1871), L. R. 6 Q. B. 707). In the same case it was held that the bridges and dry dock were accessories to the canal, and must be considered part thereof; and that the whole ought to be rated as land (*ibid.*). A line of railway is "land" within the meaning of the section, and is therefore rateable at the lower rate (*R.* v. *Midland Rail. Co.* (1875), L. R. 10 Q. B. 389). The occupiers of docks covering an area of 165 acres, of which 95 formed a wet dock or tidal basin, were held liable to be rated at the higher rate (*Peto* v. *West Ham Overseers* (1859), 28 L. J. M. C. 240). Water mains (*R.* v. *Southwark and Vauxhall Water Co.* (1856), 21 J. P. 501; 6 E. & B. 1008), and the reservoirs of a water company should apparently also be rated on the lower scale (*Hampton* v. *Southwark and Vauxhall Water Co.*, [1900] A. C. 3, 64 J. P. 260).

Tithe rent-charge and payments in lieu of tithe are rateable at the lower scale as land by virtue of the Tithe Rating Act, 1851. Mines (other than coal mines) made rateable by the Rating Act, 1874, together with sporting rights, when severed from the occupation of the land, and assessed in pursuance of the Act of 1874, seem to be rateable upon the higher scale. The position of woodlands is not clear, but as they are treated in the Act of 1874 as land, it is arguable that they should be rated on the lower scale.

It is generally considered that all the enactments for the time being in force relating to the levy and collection of the poor rate are applied to the lighting rate by s. 33 of the Lighting and Watching Act, 1833. Thus, in *R.* v. *Oxfordshire JJ.* (1854), 22 L. T. (o. s.) 219, it was held that where the owners of small tenements were rated to the poor rate, instead of the occupiers, such owners were the proper persons to be rated to a lighting rate.

Land and houses to be rated separately.

34. Provided always, that it shall be lawful for the overseers of the poor of any such parish, and they are hereby required, whenever, according to the rate made for the relief of the poor, one and the same person shall be rated in one sum in respect of land, and also of houses, buildings, and other property, to cause such land, and also such houses, buildings, and other property, to be separately assessed; and the sum hereby authorised to be levied shall be assessed accordingly: Provided always, that every court-yard, yard, or garden (such garden not being a market garden or nursery ground) shall be included in and make part of the assessment to be made on the house, buildings, or other property, to which they may be respectively attached: Provided also, that such land, houses, buildings, and other property shall not in the whole be assessed at a higher amount than they were in the last rate made for the relief of the poor within the said parish.

Lamp irons to be put up.

45. It shall be lawful for the said inspectors, and they are hereby empowered, from time to time to cause such lamp irons or lamp posts or other posts to be put or fixed upon or against the walls or palisades of any houses, tenements, buildings, or inclosures, (doing as little damage as may be practicable thereto,) or to be put up and erected in such other manner, within all or any of the said roads, streets, and places within the limits of this Act, as they shall think proper; and also to cause such number of lamps, of such sizes and sorts, to be provided and affixed and put upon such lamp irons and lamp posts, as they shall think necessary for lighting all or any of such roads, streets, and places, and cause the same to be lighted with gas, oil, or otherwise, for such number of hours in every twenty-four hours as they shall think necessary; and also to cause such a number of watch-houses or watch-boxes to be provided, erected, or affixed as they shall think necessary for watching all or any of the streets, roads, and places within the limits of this Act.

It is not lawful to affix lamps, etc., on private premises without consent. See s. 46, and *Meek* v. *Langdon* (1862), 37 L. T. Journ. 181.

Gas pipes not to be laid on private premises without consent.

46. Provided always, that nothing herein contained shall extend or be construed to extend to authorise or empower the said inspectors, or any body or bodies politic or corporate or person or persons contracting with the said inspectors for lighting with gas such roads, streets, and public places, to carry or lay any pipe or pipes, cocks, or branches from any mains or pipes, against, into, or through any dwelling-house or dwelling-houses, manufactories, public or private buildings, or to continue the same, without the consent in writing of the owner or owners, occupier or occupiers for the time being of such dwelling-house or dwelling-houses, manufactories, public or private buildings respectively, nor to enable any body or bodies politic or corporate or person or persons contracting with the said inspectors for lighting such streets and public places to enter into or upon any private lands or grounds, without the consent in writing of the owner or owners, occupier or occupiers of such lands or grounds for that purpose first had and obtained.

Owners of private grounds may alter position of pipes.

47. Provided also, that in case the soil, pitching, or pavement of any road or way, for the purpose of laying any gas main or gas pipe along, under, or across the same, be broken up, with the consent of the owner or owners of the soil for the time being, and after the same shall have been so laid and placed such owner or owners shall be desirous of having the same removed, it shall be lawful for such owner or owners, at any time or times thereafter, if he, she, or they shall deem it necessary or expedient, at his, her, or their own costs and charges, to alter and vary the position of such pipe or pipes, main or mains, and to relay the same,

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so that no damage be done thereby to the said body or bodies politic or corporate or person or persons contracting with the said inspectors, and so that such body or bodies politic or corporate or person or persons contracting with the said inspectors as aforesaid be not thereby prevented from or obstructed in lighting any public or private lamp, unless such damage or obstruction be unavoidable.

For stopping the escape of gas.

48. Whenever any gas shall be found to escape from any of the pipes which shall be laid down or set up by order of the said inspectors in pursuance of this Act, the body or bodies politic or corporate or person or persons whosoever making, furnishing, or supplying any gas used or burnt for lighting any highway, street, or place, or any houses, manufactory, building, or other premises within the limits of any parish adopting the provisions of this Act, shall at their own expense, immediately after receiving notice by parol or in writing from any person or persons whatsoever, to be given or left at their office or usual place of transacting their business, of any such escape of gas, cause the most speedy and effectual measures to be taken to stop or prevent such gas from escaping; and in case the said body or bodies politic or corporate or person or persons as aforesaid shall not, within twenty-four hours next after such notice by parol or in writing being given of any such escape of gas, effectually stop and prevent the gas from escaping, and wholly and satisfactorily remove the cause of complaint, then and in every such case the said body or bodies politic or corporate or person or persons as aforesaid shall for every such offence forfeit and pay any sum not exceeding five pounds for each and every day after the expiration of twenty-four hours from the time of giving any such notice during which the gas shall be suffered to escape as aforesaid; which penalty shall from time to time be recoverable in a summary way, on the oath or affirmation of one or more credible witness or witnesses, before any two justices of the peace, and shall and may be recovered, with all reasonable charges, by distress and sale of the goods and chattels of any such body or bodies politic or corporate or person or persons as aforesaid, by the warrant of any two justices of the peace as aforesaid, to be granted in like manner and subject to the like provisions as are herein directed touching other penalties to be recovered by virtue of this Act.

Penalty for neglect.

Power to convey away washings of gasworks.

49. It shall be lawful for the body or bodies politic or corporate or other person or persons whosoever, making, furnishing, or supplying any gas used or burnt for lighting any highway, street, or place, or any house, manufactory, building, or other premises, within the limits of any parish adopting the provisions of this Act, to lay iron pipes, of such breadth, depth, and dimensions, and in such manner as they shall think expedient, under the roads, streets, and other public places within the limits of this Act, for the purpose of carrying off the washings or other waste liquids which may arise in the prosecution of the works aforesaid, the said body or bodies politic or corporate, or other person or persons as aforesaid, doing as little damage as may be in laying the said pipes, and immediately repairing, at their own expense, all such damage; provided that no such washings or other waste liquids, or any other matter or thing made or arising in the manufacture of such gas, shall be conducted or conveyed into any river, brook, canal, or running stream, and that no such pipe shall be laid in any situation where the same can, shall, or may in any matter interfere with, prejudice, or affect any of the present or future public or private wells, sewers, or drains within the limits of the parish adopting the provisions of this Act, or without the consent of the said inspectors.

Penalty for conveying washings into any river, etc.

50. If any body or bodies politic or corporate, company or companies of proprietors, or any other person or persons whatsoever, making, furnishing, or supplying any gas used or burnt for lighting any highway, street, or place, or any house, manufactory, building, or other premises, within the limits of any parish adopting the provisions of this Act, shall at any time empty, drain, or convey, or cause or suffer to be emptied, drained, or conveyed, or to run or flow, any washings or other waste liquids, substances, or things whatsoever which shall arise or be made in the prosecution of the said gasworks, or in the manufacture or process of making or procuring such gas, into any river, brook, or running stream, reservoir, canal, aqueduct, waterway, feeder, pond or springhead, or well, or into any drain, sewer, or ditch communicating with any of them, or do or cause to be done any annoyance, act, or thing to the water contained in any of them, whereby the water contained therein or any part thereof shall or may be spoiled, fouled, or corrupted, then and in every such case any such body or bodies politic or corporate, company or companies of proprietors, or other person or persons, so offending as aforesaid, shall forfeit and pay for every such offence the sum of two hundred pounds ; and such penalty or forfeiture shall and may be sued for and recovered, together with full costs of suit, in any of his Majesty's courts of law, by regular or summary action or information ; and the whole of such penalty shall be paid to the person or persons who shall inform or sue for the same : Provided always, that no such penalty or forfeiture shall be recoverable unless the same be sued for within six calendar months from after the time when such annoyance, nuisance, injury, damage, act, or thing shall have ceased and determined : Provided also, that over and above and in addition to the said penalty of two hundred pounds, and whether such penalty shall or shall not have been sued for or recovered, in case any of the said washings or other waste liquids, or noisome or offensive liquids, substances, or things, shall be emptied, drained, conducted, or conveyed, or caused or suffered to run or flow, in manner aforesaid, into any river, brook, or running stream, or any reservoir, canal, aqueduct, waterway, feeder, pond or springhead or well, or into any drain, sewer, or ditch communicating with any of them, or any such annoyance, nuisance, injury, damage, act, or thing shall be done or caused to be done as aforesaid, and notice thereof in writing shall have been given by any person or persons to whom the same shall belong, or by any other person or persons whomsoever, to the said body or bodies politic or corporate, company or

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companies of proprietors or any of them, or other the person or persons making, furnishing, or supplying any gas used or burnt for lighting any highway, street, or place, or any house, manufactory, building, or other premises, within any parish or part of a parish adopting the provisions of this Act, so offending, or to his, her, or their clerk or clerks, or to any person in his or their service or employ, and such body or bodies politic or corporate, company or companies of proprietors, or other person or persons, shall not, within twenty-four hours after such notice shall have been given to them or him as aforesaid, stop and hinder or prevent all and every such washings, waste liquids, or noisome or offensive liquids, substances, or things, from being emptied, drained, conducted, or conveyed, or from running or flowing, in manner aforesaid, and every such other annoyance, nuisance, injury, damage, act, or thing from being done as aforesaid, then and in every such case the said body or bodies politic or corporate, company or companies of proprietors, or other person or persons so offending, shall forfeit and pay the sum of twenty pounds for each and every day such washings, waste liquids, or noisome or offensive liquids, substances, or things shall be so emptied, drained, conducted, or conveyed, or caused or suffered to run or flow, in manner aforesaid, or such other annoyance, nuisance, injury or damage, act or thing shall be so done or caused to be done as aforesaid; and such last-mentioned penalty shall and may be recovered and levied in such and the like manner as any other penalty or forfeiture is in and by this Act directed to be recovered and levied, and shall be paid to the informer, or to the person or persons who, in the judgment of the justice before whom the conviction shall take place, shall have sustained any annoyance, injury, or damage by any such act so done or committed.

Certain words omitted from this section are repealed by the Statute Law Revision Act (No. 2), 1888 (51 & 52 Vict. c. 57), and the Statute Law Revision Act, 1890 (53 & 54 Vict. c. 33).

Gas pipes to be laid four feet from water pipes, and in a particular manner.

51. All and every the pipes or other conduits to be used or laid for the conveyance of gas, in, under, through, along, across, or round any road, street, or other place within the limits of any parish adopting the provisions of this Act, shall be so laid at the greatest practical distance, and whenever the width of the carriageway in such street or place will allow thereof, at the distance of four feet at least from the nearest part of any water pipe already laid down or hereafter to be laid down for the conveyance of water in, under, through, along, across, or round any of the said roads, streets, or other places within the limits of any parish adopting the provisions of this Act, excepting in cases where it shall be unavoidably necessary to lay the gas pipes across any of the said water pipes, in which cases the said gas pipes shall be laid over and above the said water pipes, at the greatest practical distance therefrom, and shall form therewith a right angle, and in such cases the said gas pipes so crossing the said water pipes shall be at least nine feet in length so that no joint of any of the said gas pipes shall be nearer to any part of the said water pipes than four feet at least; and in laying down the said gas pipes the said contractors or other persons supplying gas shall in no case join two or more gas pipes together previous to their being laid in the trench, but shall lay each pipe as near as may be in its place in the trench, and shall in such trench properly form the jointing with the other pipes to be added thereto with proper and sufficient materials, and shall also make and keep all and every such pipes, and all pipes connected and communicating therewith, and all the screws, joints, inlets, apertures, or openings therein respectively, air-tight, and in all and every respect prevent the said gas from escaping therefrom, upon pain of forfeiting for every offence the sum of five pounds.

To prevent escape of gas and contamination of water.

52. Whenever the water of any company of proprietors for supplying the inhabitants of any houses within the limits of any parish, part of a parish, or place adopting the provisions of this Act, with water shall be contaminated by any of the gas used or burnt for lighting any highway, street, or place, or any house, manufactory, building, or other premises, within the limits of any parish, part of a parish, or place, adopting the provisions of this Act, the body or bodies politic or corporate, or person or persons making, furnishing, or supplying such gas, shall forfeit and pay the sum of twenty pounds, to be sued for and recovered and shall be applied to and for the use and benefit of the said company supplying water as aforesaid; and in case any such water shall be contaminated or affected by gas in any way whatsoever, then and in every such case the said company or other persons making, furnishing, or supplying such gas shall, within twenty-four hours next after the notice thereof in writing, signed by the treasurer or other officer of and for such water company as aforesaid, or by any person making use of such water, to be left at the usual place or office of transacting business of the said body or bodies politic or corporate, or other person or persons, cause the most proper and effectual measures to be taken to stop and prevent gas from escaping from their mains, works, or pipes, or contaminating or affecting the water of such company as aforesaid; and in case the said body or bodies politic or corporate, or other person or persons, making, furnishing, or supplying gas, shall not, within twenty-four hours next after such notice so left as aforesaid, effectually stop and prevent the gas from so escaping, and wholly and satisfactorily remove the cause of every such complaint, and prevent all and every such contamination whereof notice shall be given as aforesaid, then the said body or bodies politic or corporate, or other person or persons as aforesaid, shall on each and every complaint forfeit and pay to the treasurer or other officer for the time being of such water company, as aforesaid, for the use and benefit of the same company, over and above the before-mentioned penalty of twenty pounds, the sum of ten pounds for each and every day during which the water of the said last-mentioned company shall be and remain contaminated or affected by such gas; and in default of payment thereof as aforesaid, such penalty or penalties shall and may be recovered by information to be exhibited on the oath of one credible witness, by and in the name of the treasurer or other

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officer for the time being of the said water company as aforesaid, or by and in the name of any one or more of the directors of the said company, at the option of the parties prosecuting such information against the said body or bodies politic or corporate or other person or persons making, furnishing, or supplying gas, before any two justices of the peace, with costs, to be assessed by such justices, and to be levied by distress and sale of the goods and chattels of the said body or bodies politic or corporate or other person or persons making, furnishing, or supplying such gas, together with the charges of such distress and sale, by warrant under the hand and seal of such justices, which warrant such justices are hereby empowered to grant; and such penalty or penalties, when so levied, shall be paid to the treasurer or other officer for the time being of such water company, for the use of such water company.

For ascertaining if the water be contaminated.

53. In any case in which it shall be or become a question upon such complaint as aforesaid, whether the said water be contaminated or affected by the gas of the said body or bodies politic or corporate or other person or persons making, furnishing, or supplying any gas used or burnt for lighting any highway, street, or place, or any house, manufactory, building, or other premises, within the limits of this Act, it shall be lawful for the company of proprietors, or other the owners or proprietors of any waterworks, to dig to and about and search and examine the mains, pipes, conduits, and apparatus of the said body or bodies politic or corporate, or other person or persons as aforesaid, for the purpose of ascertaining whether such contamination proceed or be occasioned by the gas of the said body or bodies politic or corporate, or other person or persons as aforesaid; and if it shall appear that the said water has been contaminated by any escape of gas as aforesaid, the costs and expenses of the said digging, search, and examination, and of the repair of the pavement of the roads, street or streets, which shall be taken up or disturbed, shall be borne and paid by the said body or bodies politic or corporate, or person or persons as aforesaid; which costs and expenses of digging, search, and examination shall be ascertained and determined, if necessary, by such justices as aforesaid, and be recovered in like manner as any penalty may be recovered by virtue of this Act: Provided always, that if upon such examination it shall appear that such contamination has not arisen from any such escape of gas from any of the mains, pipes, or conduits of the said body or bodies politic or corporate, or other person or persons as aforesaid, then and in such case the said company of proprietors, or other the owners or proprietors of such waterworks, shall bear and pay all the costs and expenses of such search, examination, and repair as aforesaid, and shall also make good to the said body or bodies politic or corporate, or other person or persons as aforesaid, any loss, injury, or damage which may be occasioned to the said mains, pipes, conduits, or apparatus of the said body or bodies politic or corporate, or other person or persons as aforesaid, in and by such search and examination, the amount of such injury, loss, or damage to be ascertained and determined by such justices of the peace as aforesaid.

Persons supplying gas liable to be indicted for a nuisance.

54. Provided always that nothing in this Act contained shall extend or be construed to extend to prevent any person from proceeding by indictment or otherwise against any of the officers, servants, or workmen of the body or bodies politic or corporate, or other person or persons whomsoever, making, furnishing, or supplying any gas used or burnt for lighting any highway, street, or place, or any house, manufactory, building, or other premises, within the limits of any parish adopting the provisions of this Act, in respect of any works or other means which shall be employed by them or any of them in making the said gas, and using the same in furnishing with lights as aforesaid, as a public or private nuisance, or from bringing any action against the said body or bodies politic or corporate, company of proprietors, or person or persons as aforesaid, or any of their officers, servants, or workmen, for any injury sustained by reason of any such works, or the use of the said gas, or the method of lighting therewith, whether such injury shall proceed from the preparation or the use of the same gas, or method of lighting, or the carelessness or want of skill of any of the persons employed therein, or from any other cause whatsoever.

Penalty for wilfully destroying or injuring lamps.

55. If any person shall wilfully break, throw down, spoil, or damage any watch-house, watchbox, or lamp, lamp iron, lamp post, pale, rail, chain, or other furniture thereof, or wilfully extinguish the light of any such lamp, it shall be lawful for any person or persons who shall see the offence committed to apprehend, and also for any other person or persons to assist in apprehending, the offender or offenders, and by the authority of this Act, and without any warrant, and to deliver him or them to any constable, who is to keep him, her, or them in safe custody, and with all reasonable despatch to convey him, her, or them before any justice of the peace; any such justice shall examine upon oath any witness or witnesses who shall appear to be produced to give evidence touching such offence; and if the party accused shall be convicted of any such offence, either by his, her, or their confession, or upon such evidence as aforesaid, he, she, or they shall forfeit any sum not exceeding forty shillings for every lamp, lamp iron, or lamp post so broken, thrown down, or damaged, and shall also make full satisfaction for the damage which shall have been done thereby, and not exceeding five pounds for any other such offence as aforesaid, and shall also make full satisfaction for the damage which shall have been done thereby; and one moiety of such forfeiture shall be paid to the person or persons apprehending such offender, and the other moiety shall be applied for the purposes of this Act, and shall be levied and recovered in the same manner as any forfeiture is by this Act herein-before directed to be levied and recovered in the case of any person assaulting any watchman or other person in the execution of his duty.

How persons accidentally

56. If any person shall carelessly or accidentally break any of the said lamps, lamp irons, or lamp posts, or do any other such damage or

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breaking lamps are to be dealt with.

injury as herein-before is mentioned, and shall not, upon demand, make satisfaction to the said inspectors for the damage or injury so done, it shall and may be lawful for any justice of the peace, upon any complaint thereof made to him upon oath, to summon the party complained of, and upon hearing the parties upon both sides, or on the non-appearance of the party complained of, to examine the matter of complaint and award such sum of money by way of satisfaction to the said inspectors for such damage, as such justice shall think reasonable ; and in case of neglect or refusal forthwith to pay such money, then the same and all expenses attending the recovery thereof may be levied and recovered as any forfeiture is by this Act herein-before directed to be levied and recovered in the case of any person assaulting any watchman or other person in the execution of his duty.

Goods laden on a van came in contact with a lamp and broke it :—*Held*, under s. 207 of the Metropolis Management Act, 1855—a similar section—that the employer of the carman was not liable (*Harding* v. *Barker* (1888), 37 W. R. 78 ; 53 J. P. 308. He is, however, liable to an action at common law for damages caused by the negligence of his servant (*Crystal Palace Gas Co.* v. *Idris & Co.* (1900), 64 J. P. 452). If the summons charge damage as done unlawfully and carelessly, it need not say "carelessly or accidentally," and a conviction will be good if there be evidence of carelessness, though short of what might be called negligence (*Ashton* v. *Eccles Corporation* (1907), 71 J. P. 55). See also hereon *Walton* v. *Vanguard Motor Bus Co.* (1908), 72 J. P. 505 ; *Barnes & Co.* v. *London General Omnibus Co.* (1908), 73 J. P. 68.

Power for inspectors to contract for the works directed to be done by this Act.

57. It shall and may be lawful to and for the said inspectors from time to time to enter into any contract or contracts with any person, company or companies whatsoever, for lighting the same streets, roads, and other places, or any of them, or any part thereof, either with oil or with gas, or with any other material, or in any other manner whatsoever, or for furnishing lamps, lamp irons, lamp posts, watchboxes, posts, chains, pales, rails, and other things necessary for the purposes aforesaid, or any materials for the same ; which contract or contracts shall specify the several works to be done and the prices to be paid for the same, and the time or times when the works shall be completed, and the penalties to be suffered in cases of non-performance thereof, and shall be signed by two or more of the said inspectors, and also by the person or persons contracting to perform such works respectively, which contract or contracts, or a copy or copies thereof, shall be entered in a book to be kept for that purpose ; but no contract above the value or sum of twenty pounds shall be entered into, unless previous to the making of any such contract fourteen days notice shall be given in one or more of the public newspapers published in the county in which the said parish shall be situate, expressing the intention of entering into such contract, in order that any person or persons willing to undertake the same may make proposals for that purpose, to be offered and presented to the said inspectors at a certain time and place in such notice to be mentioned : Provided always, that if the said inspectors shall be of opinion that it will not be advantageous to contract with the person or persons offering the lowest price, it shall be lawful for the said inspectors to contract with such other person or persons as they shall think proper.

Inspectors may sue for breach of contract;

58. In case the same shall not be well and sufficiently performed, according to the terms, intent, and meaning of such contract or contracts, or shall not be finished or completed at or within the time or times specified in such contract or contracts, then the said inspectors may cause an action to be brought in any of his Majesty's courts of law at Westminster, against any such contractor, for any penalty contained in his contract; and on proof of his signing the said contract or contracts, or non-performance thereof at the time or times for that purpose to be therein mentioned, the said inspectors shall be entitled to and recover the full penalty contained in any such contract, which, when recovered, shall be applied for the purposes of this Act: Provided always, that it shall be lawful for the said inspectors (if they think fit) to compound and agree with any contractor for any penalty incurred by him for the breach or non-performance of any such contract, for such sum of money as the said inspectors shall think proper, not being less than the injury or damage sustained by the breach or non-performance of such contract, and all costs, charges, and expenses which shall be occasioned thereby; and it shall be lawful for the said inspectors to cancel or make void any contract with any person or persons whomsoever, by mutual consent, if they shall think proper.

or may compound with contractor.

Inspectors may purchase or rent ground or buildings for the purposes of this Act.

59. The said inspectors may and they are hereby authorised and empowered to treat with the owner or owners and occupier or occupiers of any houses, buildings, lands, and grounds for the purposes of this Act, for such sum or sums of money, or yearly rent, or for such time, as to them shall appear reasonable (which sum or sums of money and yearly rents shall be respectively paid out of the monies to arise by virtue of this Act), in such place or places as they may think proper.

Property of lamps, etc., vested in the inspectors.

60. The property of and in all lamps, lamp irons, lamp posts, watch-houses, watchboxes, posts, chains, pales, and rails in, about, or belonging to the said streets and places within any parish or part of a parish adopting the provisions of this Act, or any of them, and of and in all the iron, timber, stone, bricks, and other materials and furniture and things of, in, and belonging thereto, (except when the same shall be otherwise regulated by contract with the said inspectors,) shall be and the same are hereby vested in the said inspectors, and may be sold and disposed of from time to time as they shall think proper; and the money arising from such sale or sales shall be applied towards the purposes of this Act; and the said inspectors are hereby authorised and empowered to bring or cause to be brought any action or actions in such name or names and in manner as herein is provided, or to prefer or order and direct the preferring of any bill or bills of indictment, against any person or persons who shall steal, take, or carry away (as the case may be) all or any part of such lamp irons, lamp posts, watch-houses, watchboxes, iron, timber, and stone, bricks, furniture, posts, chains, pales, rails, or other materials and things as aforesaid; and in all such

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actions or bills of indictment it shall be and be deemed and taken to be sufficient to state generally that the article or articles, thing or things, for or on account of which such action or actions shall be brought, or such bill or bills of indictment preferred, is or are the property of the inspectors, without particularly stating or specifying the name or names of all or any of the said inspectors.

Inspectors of adjoining parishes may unite.

61. It shall be lawful for the inspectors appointed by any parish adopting the provisions of this Act to unite with the inspectors of any adjoining parish or parishes, for the better carrying into effect the purposes of this Act.

63. [Recovery and application of penalties.]

69. [Limitation of actions.]

Sect. 69 is repealed by the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61). See p. 1062.

Parishes may adopt only parts of Act.

71. The provisions of this Act may be adopted in any parish either as to lighting or as to watching, or as to lighting and watching, as may be deemed expedient; and the provisions of this Act may be adopted in any parish so far as the same relate to lighting, although such parish shall be watched under or by virtue of any Act of Parliament passed for that purpose, and may be adopted in any parish so far as the same relate to watching, although such parish shall be lighted under or by virtue of any Act of Parliament passed for that purpose.

Parts of parishes may adopt the provisions of this Act,

but not to interfere with any local Act.

73. It shall and may be lawful to and for the inhabitants of part of any parish to hold a meeting of the inhabitants of such part to be convened in manner herein directed, and to be composed of such inhabitants only, for the purpose of determining whether the provisions in this Act contained, or any of them, shall be adopted and carried into execution in such part of the said parish; and all such meetings shall be subject and liable to all the clauses, regulations, and restrictions in this Act contained in respect of meetings to be convened for the purposes thereof; and the churchwardens of the said parish shall act in the same manner for such part of the parish the inhabitants of which may be desirous of adopting the provisions of this Act, for carrying the provisions of the same into effect, as they could by virtue hereof act for the parish at large; and the overseers of the poor of the said parish, or of any township or division of the said parish, shall be amenable to the provisions of this Act, so far as they may relate to the part of such parish situate within or partly within the division or district for which such overseers shall act, for the purpose of levying, raising, and paying the rates within the part of such parish adopting the provisions of this Act, in the same manner as they would be if the whole parish, township, or place for which they act had adopted the provisions of this Act: Provided always, that no proceedings of the said inhabitants, nor any rate to be raised or levied in pursuance of such proceedings, shall extend to any part of the said parish which may already be regulated by or under the provisions of any Act for the purposes in this Act mentioned,

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nor interfere with the powers and provisions of such Act or the execution thereof in any respect whatsoever.

Under the authority of this section, the Act was adopted as to part only of a parish. A rate made on the whole parish was quashed (*Potton Churchwardens* v. *Brown* (1868), 10 L. T. 525).

Surveyor of commissioners of sewers may enter into gasworks, to see if there be any escape of gas, etc.

74. It shall be lawful for any surveyor or other person or persons acting by or under the authority of commissioners of sewers, at any time or times in the daytime, to enter into any manufactory, gasometer, receiver, or other building belonging to any gas company or companies or the said inspectors, in order to inspect and examine if there be any escape of gas, or any washings or other waste liquids, substances or other things whatsoever, which shall arise or be produced in the prosecution of the said gasworks, or in the manufacture or process of making or procuring such gas, into any public sewer or drain ; and if such surveyor or other person or persons acting by or under the authority of commissioners of sewers shall at any such time or times be refused admittance or entrance into any such manufactory, gasometer, receiver, or other building, for the purpose of making such inspection and examination as aforesaid, or on being admitted shall be obstructed in or prevented from making such inspection and examination as aforesaid, the said gas company or companies, or the said inspectors, so offending, shall forfeit and pay for every such offence the sum of twenty pounds.

II.—WATER SUPPLY.

PROVISIONS OF THE PUBLIC HEALTH ACT, 1875.

(38 & 39 VICT. C. 55.)*

Local authority to provide for cleansing of streets and removal of refuse.

42. Every local authority may, and when required by order of the Local Government Board shall, themselves undertake or contract for—

The removal of house refuse from premises ;

The cleansing of earthclosets, privies, ashpits, and cesspools ;

either for the whole or any part of their district : Moreover every urban authority and any rural authority invested by the Local Government Board with the requisite powers may, and when required by order of the said Board shall, themselves undertake or contract for the proper cleansing of streets, and may also themselves undertake or contract *for the proper watering of streets* for the whole or any part of their district.

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* The corresponding powers and duties in Ireland are enacted in the Public Health (Ireland) Act, 1878 (41 & 42 Vict. c. 52), ss. 52, 61—77, which are similar in wording to the above. See further the Public Health (Ireland) Act, 1896 (59 & 60 Vict. c. 54), ss. 5, 15.

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All matters collected by the local authority or contractor in pursuance of this section may be sold or otherwise disposed of, and any profits thus made by an urban authority shall be carried to the account of the fund or rate applicable by them for the general purposes of this Act; and any profits thus made by a rural authority in respect of any contributory place shall be carried to the account of the fund or rate out of which expenses incurred under this section by that authority in such contributory place are defrayed.

If any person removes or obstructs the local authority or contractor in removing any matters by this section authorised to be removed by the local authority, he shall for each offence be liable to a penalty not exceeding five pounds: Provided that the occupier of a house within the district shall not be liable to such penalty in respect of any such matters which are produced on his own premises and are intended to be removed for sale or for his own use, and are in the meantime kept so as not to be a nuisance.

Sect. 148 of the Public Health Act, 1875, also empowers urban authorities to make agreements as to the watering of streets with the persons liable to repair such streets.

POWERS OF LOCAL AUTHORITY IN RELATION TO SUPPLY OF WATER.

General powers for supplying district with water.

51. Any urban authority may provide their district or any part thereof, and any rural authority may provide their district or any contributory place therein, or any part of such contributory place, with a supply of water proper and sufficient for public and private purposes, and for those purposes or any of them may—

(1.) Contract and maintain waterworks, dig wells, and do any other necessary acts; and

(2.) Take on lease or hire any waterworks, and (with the sanction of the Local Government Board) purchase any waterworks, or any water or right to take or convey water, either within or without their district, and any rights powers and privileges of any water company; and

(3.) Contract with any person for a supply of water.

Duty of local authority.

The above section is enabling only, but if water be required in any district, and the local authority can and do not procure it, they will be in default, and proceedings may be taken under s. 299, *post*, p. 901.

The Public Health (Water) Act, 1878 (which is set out at length, *post*, p. 918), provides by s. 3 that it shall be the duty of every rural sanitary authority to see that every occupied dwelling-house within their district has, within a reasonable distance, an available supply of water sufficient for the consumption and use for domestic purposes of the inmates of the house. It may therefore be the duty of a rural sanitary authority to provide a water supply. The same section provides that nothing in the Act is to be deemed to relieve the authority of their duty to provide a water supply under the Act of 1875. Sect. 11 of the Act of 1878 provides that the Local Government Board may, if they think fit, by order invest any urban sanitary authority with all or any of the powers and duties which are by that Act given to a rural sanitary authority, and such investment may be made either unconditionally or subject to any conditions to be specified by the Board as to the time, portion of the district, or manner during, at or in which the powers and duties are to be exercised.

When a rural district council determine to adopt plans for the water supply of a contributory place, they are required to give notice to the parish council before entering into a contract (L. G. Act, 1894, s. 16 (3)).

A rural district council cannot, at the expense of the rates, promote a private Bill to obtain a water supply for their district (*Cleverton* v. *St. German's Rural Sanitary Authority* (1886), 56 L. J. Q. B. 83; 3 T. L. R. 43). They might probably promote a Bill, if they can find persons to provide the money (*Att.-Gen.* v. *West Riding of Yorks. Rivers Board* (1905), 69 J. P. 177; 3 L. G. R. 764), and if the Bill become an Act, the payment of the whole of the expenses out of the rates might be provided for by means of the insertion of an appropriate clause. As to the powers of a parish council in relation to water supply, see s. 8 (1) (*e*) (*i*) (*k*) of the Local Government Act, 1894 (56 & 57 Vict. c. 73), but it is specially provided by sub-s. 3 of that section that nothing in that section shall derogate from any obligation of a district council with respect to the supply of water or the execution of sanitary works.

Saving of water rights.

Sects. 121—124 of the Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), contain certain limited powers in regard to water supply; but this Act applies only when it is incorporated with a special Act.

The Act of 1875 contains a section saving water rights generally. See s. 332, *post*, p. 917, and the case of *Roberts* v. *Gwyrfai D. C.*, [1899] 2 Ch. 608.

Acquisition of land and water rights.

Any necessary powers may be granted for taking land by provisional order (see s. 176); but there is no power in the Act to take water from any stream compulsorily. Where this power is sought a special Act must be applied for. See, further, as to the powers of the Local Government Board, *post*, p. 883.

Power of purchasing waterworks.

It is to be particularly observed that purchase of waterworks can only be made with the sanction of the Local Government Board. Sect. 63 authorises water companies to lease or sell and transfer their undertakings to local authorities.

The Act of 1875 defines "water company" to mean "any person or body of persons corporate or unincorporate, supplying, or who may hereafter supply, water for his or their own profit" (s. 4); and the expression "waterworks" is defined to include "streams, springs, wells, pumps, reservoirs, cisterns, tanks, aqueducts, cuts, sluices, mains, pipes, culverts, engines, and all machinery, lands, buildings, and things for supplying or used for supplying water; also the stock-in-trade of any water company" (*ibid.*).

As to agreements with landowners for the construction by them of works for water supply, see The Limited Owners Reservoirs and Water Supply Further Facilities Act, 1877 (40 & 41 Vict. c. 31), *ante*, p. 709, and also 60 & 61 Vict. c. 44, and 62 & 63 Vict. c. 46.

An agreement (sanctioned by Act of Parliament) was entered into between two water companies, by which it was agreed that company A. should take over the works, provide for a mortgage debt, and pay interest upon the shares of company B. This agreement was sanctioned by Act of Parliament, and the transaction was carried into effect by an indenture of January, 1857, which provided that if company A. (or their intended assignees, the corporation or local board of health), being desirous of becoming the absolute and unrestricted owners of the works of company B., subject only to the mortgage debt, should "on or before any 25th of December, after having given to company B. six months previous notice of their desire to avail themselves of the option thereby given, pay unto company B" £46,246, the amount of their share capital, the party so paying should become absolutely entitled to

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the works. In June, 1870, the corporation who had acquired the interest of company A. gave notice to company B. of their intention to pay the £46,246 on December 25th following, but they were unable, from want of funds, to carry out the purchase. In June, 1871, they again gave notice that they would pay the money on December 25th, 1871. It was held that the corporation, by giving the first notice and failing to act upon it, had not lost the right given to them by the deed of January, 1857, of purchasing, after six months' notice, on or before any 25th day of December (*Ward* v. *Wolverhampton Waterworks Co.* (1871), L. R. 13 Eq. 243).

In 1882 the defendant agreed with the guardians of Hunslet to supply water to the inhabitants of two townships within the district on the same terms as she supplied water to her own tenants. She made the necessary expenditure in pipes and otherwise in connection with a reservoir she had on land of her own, and supplied the inhabitants of the townships with water. The guardians having entered into negotiations to obtain a supply elsewhere, she gave notice on December 22nd, 1892, to the inhabitants, other than her own tenants, that she would cease to supply them on March 25th, 1893. There was evidence that, owing to the nature of the district, no other water supply could be procured in the district. NORTH, J., decided that the guardians were entitled to maintain an action for injunction; that the defendant could only determine the contract on giving reasonable notice; and that three months notice was not reasonable; and he granted an injunction (*Guardians of Hunslet* v. *Ingram*, W. N. [1893] 61; *Times*, 27th March, 1893).

Capital outlay for water supply.

As to the capital outlay of urban and rural authorities in connection *inter alia* with water supply, ss. 233 *et seq.* of the Act of 1875 authorise local authorities to borrow with the sanction of the Local Government Board, and ss. 242, 243 empower the public works loans commissioners to advance loans to such authorities. See also the Public Works Loans Acts, 1875 to 1900, viz. (38 & 39 Vict. c. 89; 39 & 40 Vict. c. 31; 41 & 42 Vict. c. 18; 42 & 43 Vict. c. 77; 44 & 45 Vict. c. 38; 45 & 46 Vict. c. 62), the Local Loans Act, 1875 (38 & 39 Vict. c. 83); the Local Loans (Sinking Fund) Act, 1885 (48 & 49 Vict. c. 30); the National Debt and Local Loans Act, 1887 (50 & 51 Vict. c. 16; 50 & 51 Vict. c. 37; 55 & 56 Vict. c. 61; 57 & 58 Vict. c. 11; 59 & 60 Vict. c. 42; 60 & 61 Vict. c. 51; 61 & 62 Vict. c. 54); and the Finance Acts, 1899 (62 & 63 Vict. c. 9), s. 8, and 1907 (7 Edw. 7, c. 13), s. 10.

When application is made to the Local Government Board for sanction to a loan for the construction of waterworks, estimates and details have to be furnished to that Board on forms which are provided for that purpose.

Annual expenses of water supply.

As to the annual expenses attending water supply by local authorities, s. 56 authorises the charging of water rates or water rents; and s. 10 of the Public Health (Water) Act, 1878, enables ratepayers to compel them to charge such water rates or water rents. See *post*, p. 924. See notes to s. 56, *post*, p. 861.

The expenses in regard to water supply of rural authorities, if and so far as not defrayed out of water rates or rents, are to be "special expenses" and are to be apportioned among contributory places (s. 229). The corresponding section in the Public Health (Ireland) Act, 1878 (41 & 42 Vict. c. 52), is s. 232. See *R.* (*Ballycastle R. D. C.*) v. *L. G. B. for Ireland* [1904], 2 Ir. R. 272, decided under that section. See also *R.* (*Potts*) v. *L. G. B. for Ireland*, [1906] 2 Ir. R. 206.

Supply outside district of local authority.

Where a local authority, having the supply of water in their own hands, were about to supply water in bulk within their district to a railway company, to be used by the company in the district of another local authority, also possessing like powers, an injunction was granted (*Attorney-General on relation of Wakefield Union* v. *Morley Corporation and G. N. Rail. Co.*, Jl. of G. L., March 6th, 1894, vol. 63, p. 441; and *Halifax Corporation* v. *Morley Corporation, ibid.*, May 8th, 1894, vol. 63, p. 855; 10 T. L. R. 454). *Cf. Gaslight and Coke Co.* v. *South Metropolitan Gas Co.* (1890), 62 L. T. 126, cited *ante*, p. 278, and *Seaton* v. *Linlithgow* (1900), 2 F. 907.

A water company, authorised by their special Act to supply water within the limits defined by their Act, not only for domestic purposes but also in bulk, agreed to supply water to W., who resided outside their district, and at his cost laid a main outside their district from which pipes were laid on to his property, and connected such main with their main just within the boundary of their district. The pressure in the company's main caused the water to flow through W.'s main and pipes to the terminals on his property, where the water was received and used:—*Held*, on the construction of the company's special Acts, that they were not entitled to supply water outside their district. *Held further*, applying the principle of the decision in *Gaslight and Coke Co.* v. *South Metropolitan Gas Co.*, *supra*, on the expression "supply of gas" in the Metropolis Gas Act, 1860, that the "supply of water" to W. was not at the point where his main joined the company's main within their boundary, but at the terminals on his property where the water was delivered for use, and therefore that the company were acting *ultra vires* and must be restrained (*Attorney-General* v. *West Gloucestershire Water Co.* (1909), 73 J. P. 228).

Rating of waterworks.

As to the liability to rating of waterworks in the hands of local authorities, see *ante*, pp. 520 *et seq.*

Inspection of water supplied to shipping.

As to inspection of water supplied to shipping in certain cases, see Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 206; and as to the provision of water for emigrant ships, see, ss. 295—299 of the same Act.

With reference to the contracts of local authorities, the Public Health Act, 1875 (38 & 39 Vict. c. 55), provides as follows;

Power of local authorities to contract.

> 173. Any local authority may enter into any contracts necessary for carrying this Act into execution.

Provisions as to contracts by urban authority.

> 174. With respect to contracts made by an urban authority under this Act, the following regulations shall be observed; (namely,)
>
> (1.) Every contract made by an urban authority whereof the value or amount exceeds fifty pounds shall be in writing and sealed with the common seal of such authority:
>
> (2.) Every such contract shall specify the work, materials, matters, or things to be furnished, had, or done, the price to be paid, and the time or times within which the contract is to be performed, and shall specify some pecuniary penalty to be paid in case the terms of the contract are not duly performed:
>
> (3.) Before contracting for the execution of any works under the provisions of this Act, an urban authority shall obtain from their surveyor an estimate in writing, as well of the probable expense of executing the work in a substantial manner as of the annual expense of repairing the same; also a report as to the most advantageous mode of contracting, that is to say, whether by contracting only for the execution of the work, or for executing and also maintaining the same in repair during a term of years or otherwise:
>
> (4.) Before any contract of the value or amount of one hundred pounds or upwards is entered into by an urban authority, ten days public notice at the least shall be given, expressing the nature and purpose thereof and inviting tenders for the execution of the same; and such authority shall require and take sufficient security for the due performance of the same:
>
> (5.) Every contract entered into by an urban authority in conformity with the provisions of this section, and duly executed by the other parties thereto, shall be binding on the authority by whom the same is executed and their successors and on all other parties thereto and their executors administrators successors or assigns to all intents and purposes: Provided that an urban authority may compound with any contractor or other person in respect of any penalty incurred by reason

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of the non-performance of any contract entered into as aforesaid, whether such penalty is mentioned in any such contract, or in any bond or otherwise, for such sums of money or other recompense as to such authority may seem proper.

[The following note is substantially a reproduction of the note under s. 174 of the Public Health Act, 1875, prepared by Mr. A. Macmorran, K.C., and the present editor of this work for the last (7th) edition of Lumley's Public Health.]

Contracts of corporate bodies generally: necessity for seal.

It is to be observed that s. 174, *supra*, applies only to contracts by urban authorities. Contracts with rural district councils are regulated by the ordinary law relating to corporate bodies. The law upon the subject was thus stated by Lord COLERIDGE, C.J., in *Austin* v. *Bethnal Green* (*Guardians of*) (1874), L. R. 9 C. P. 91: "The rule of law is clear, that *primâ facie* and for general purposes a corporation can only contract under seal, for the proper legal mode of authenticating the act of a corporation is by means of its seal. On this rule, however, certain exceptions have been grafted. The principle that governs these exceptions is conveniently stated in the case of *Church* v. *Imperial Gas Light Co.* (1838), 6 A. & E. 846, at p. 861, by the Court of Queen's Bench, which statement is adopted by the Court of Exchequer in the case of *Ludlow* (*Mayor of*) v. *Charlton* (1840) 6 M. & W. 815, at p. 822. It is there stated that wherever to hold the rule applicable would occasion very great inconvenience or tend to defeat the very object for which the corporation was created, the exception has prevailed; hence the retainer by parol of an inferior servant, the doing of acts very frequently recurring, or too insignificant to be worth the trouble of affixing the common seal, are established exceptions." These two exceptions (*i.e.*, trivial matters and matters of frequent occurrence) to the general rule have ever since been given effect to, and after a conflict of authority extending over many years, a third exception has now been established by a recent decision of the Court of Appeal as follows: Where (1) the purposes for which a corporation is created render it necessary that work should be done or goods supplied to carry those purposes into effect, and (2) orders are given by the corporation for work to be done or goods to be supplied to carry into effect such purposes, and (3) the work or goods are accepted by the corporation, and the whole consideration for payment is executed, then the absence of a contract under seal is no answer to an action brought in respect of the work done or goods supplied (*Lawford* v. *Billericay Rural District Council*, [1903] 1 K. B. 772). Reference has been made above to *Austin* v. *Bethnal Green* (*Guardians of*) and *Ludlow* v. *Charlton*, as containing clear expressions of the first two exceptions to the general rule as to contracts of corporations; but the actual decisions in those cases, in so far as they are in conflict with the third exception established in *Lawford* v. *Billericay Rural District Council*, *supra* must now be disregarded.

Where at a meeting of guardians a contract not under seal was entered, into for the erecting of waterclosets in the workhouse, and the closets were put up, it was held that the guardians were liable (*Clarke* v. *Cuckfield Union* (*Guardians of*) (1852), 16 J. P. 257. And when guardians suspecting fraud by their clerk in the union accounts employed the plaintiff to investigate them, and during the investigation, and after the appointment of a new clerk, also employed the plaintiff to make up the union accounts for the last half-year, which involved a fresh investigation by him of the old accounts; and the plaintiff was employed under three several resolutions of the board entered in their minute book, but no contract was made under the seal of the board: it was held that as the work was incidental and necessary to the purposes for which the board was created, he was entitled to recover (*Haigh* v. *North Bierley Union* (*Guardians of*) (1858) 23 J. P. 195). So a plaintiff was held entitled to recover the price of coals supplied to a workhouse under a parol contract (*Nicholson* v. *Bradford Union* (*Guardians of*) (1866) L. R. 1 Q. B. 620). The appointment of a medical officer was held not to come within the exceptions to the general principle that a seal is necessary (*Dyte* v. *St. Pancras* (*Guardians of*) (1872), 36 J. P. 375). In one case the plaintiff prepared at the request of the defendant board, plans for an enlargement

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of their school, and did certain other work in connection therewith. There was no express contract to pay for such services, the only real contract between the parties being expressed in a resolution by the defendants to pay the plaintiff a percentage on the cost of construction of the buildings to be erected. The defendants having thereafter refused to carry out the work on the plaintiff's plans, the plaintiff sued them for breach of contract:—*Held*, that the contract not being under seal, the plaintiff was not entitled to recover (*Start* v. *West Mersea School Board* (1899), 63 J. P. 440). The last-mentioned decisions, however, went upon the ground that the contracts sued upon were executory only.

There is one more exception to the general rule that a corporation must contract under seal, viz.: the equitable doctrine of part performance operates in the case of a corporation in the same manner as in the case of an individual (*Crook* v. *Corporation of Seaford* (1871), L. R. 6 Ch. 551; *Wilson* v. *West Hartlepool Rail. Co.* (1865), 2 De G. J. & S. 475; *Oxford* (*Mayor, etc. of*) v. *Crow, post*, p. 846).

Any variation of a contract under seal must itself be under seal (*Kellett* v. *Stockport Corporation* (1906), 70 J. P. 154).

Mutuality.

See hereon *Dartford Union* (*Guardians of*) v. *Trickett & Sons* (1888), 53 J. P. 277; 59 L. T. (N.S.) 754; affirmed in C. A. (1889), 5 T. L. R. 619; and *Kidderminster Corporation* v. *Hardwick* (1873) L. R. 9 Ex. 13.

Contracts by committees.

The statutory provisions bearing upon the position of contracts made by the ordinary committees of the councils of urban districts (other than boroughs) and the councils of rural districts are contained in s. 56 (1) of the Local Government Act, 1894. Sub-sect. (4) of the the same section provides, however, that the section shall not apply to the council of a borough. Therefore, where the urban sanitary authority of a district is the council of a borough, s. 200 of the Public Health Act, 1875, is the relevant statutory provision. Sect. 56 (1) of the Local Government Act, 1894, provides as follows: "A . . . district council may appoint committees, consisting either wholly or partly of members of the council, for the exercise of any powers which, in the opinion of the council, can be properly exercised by committees, but a committee shall not hold office beyond the next annual meeting of the council, and the acts of every such committee shall be submitted to the council for their approval. Provided that where a committee is appointed by any district council for any of the purposes of the Public Health Acts or Highway Acts, the council may authorise the committee to institute any proceeding or do any act which the council might have instituted or done for that purpose other than the raising of any loan or the making of any rate or contract." And s. 200 of the Public Health Act, 1875, provides as follows: "Every urban authority may from time to time appoint out of their own number so many persons as they may think fit for any purposes of this Act which in the opinion of such authority would be better regulated and managed by means of a committee: Provided that a committee so appointed shall in no case be authorised to borrow any money, to make any rate, or to enter into any contract, and shall be subject to any regulations and restrictions which may be imposed by the authority that formed it."

The position of a council in respect of a contract purported to be made by a committee appears to be the same whether the council is a rural district council or the council of any urban district, viz.: that any contract which a committee may purport to make must be approved by the council appointing them, the effect of such approval being that the contract then becomes the contract of the council. See *Lawford* v. *Billericay, ante*, p. 844, at p. 780 of the report in the Law Reports. The approval or ratification of an agreement which does not come within any of the exceptions referred to in this note must be under seal. A municipal corporation, on July 18th, caused certain tolls to be put up for letting by auction, one of the conditions of the auction being that the purchaser was forthwith to pay a month's rent in advance. and to produce two sureties, who were forthwith to sign the conditions and a draft lease. The defendant was the highest bidder and was declared the

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purchaser. He paid a month's rent in advance, and signed an agreement to become lessee indorsed on the conditions. And (according to some reports), the contract was also signed by the town clerk, who, however, was not authorised by the corporation under seal to do so. The defendant failed to produce any sureties, and the plaintiff corporation, in pursuance of the conditions, ultimately determined the contract and sold the tolls at a loss. The contract was not sealed by the plaintiffs, but they on August 7th, by a resolution under seal, adopted the report of a committee, who reported that the tolls had been sold, and that the defendant had bought them for £350 and had paid a deposit of £29 3*s.* 4*d.* Three days previously, however, the defendant had written saying that he could not carry out his contract, and asking for a return of the deposit. The plaintiffs sued for breach of agreement, but it was held that the contract was one which ought to have been under the common seal of the plaintiffs and that, as it was not so sealed, or signed by any person authorised under seal to do so, and as the ratification, if a ratification at all, on August 7th, was too late and as the payment of the deposit was not such a part performance as would have bound the plaintiffs in equity specifically to perform their agreement, there was no mutuality, the plaintiff's action was not sustainable (*Kidderminster Corporation* v. *Hardwick* (1873), L. R. 9 Ex. 13). In so far as this case decided that a ratification must be under seal, it was followed in a case where a lessee of buildings belonging to a municipal corporation wrote letters to the mayor and chairman of the public improvements committee of the corporation, which had not been appointed under seal, offering to surrender his lease, pull down the existing buildings and erect new buildings, provided the corporation would grant him a new lease on specified terms. These proposals, subject to agreed modifications were accepted by the committee and approved by the council, but not under seal, and this approval was communicated to the lessee by letter from the town clerk. Afterwards the lessee withdrew his offer. It was held, that the contract not having been under the seal of the corporation, nor signed on their behalf by any person authorised to do so, nor ratified under seal, nor part performed nor acted on, could not be enforced by the corporation (*Oxford* (*Mayor, etc. of*) v. *Crow*, [1893] 3 Ch. 535. It will be observed that in *Kidderminster Corporation* v. *Hardwick, supra*, it was held that after a withdrawal by the other party, a ratification under seal by a local authority was too late. A more recent decision, however, makes it doubtful whether, when a bargain has been made by a person with a committee, that person may in all cases, prior to ratfication of the bargain by the council under their common seal, withdraw from his bargain. In *Bolton Partners* v. *Lambert* (1889), 41 Ch. D. 295, an offer of purchase was made by the defendant to one S., who was the agent of the plaintiffs, but was not authorised to make any contract for sale. S. accepted it on behalf of the plaintiffs, but the defendant subsequently withdrew his offer. After the withdrawal the plaintiffs ratified the acceptance of the offer by S. In an action for a specific performance it was held that the ratification related back to the "acceptance" by S., and that therefore the withdrawal by the defendant was inoperative. *Kidderminster Corporation* v. *Hardwick, supra*, was not cited in *Bolton Partners* v. *Lambert, supra*, and the decision in the last-mentioned case has been adversely criticised. See Fry on Specific Performance, 4th ed., in note at p. 677. In *Athy Guardians* v. *Murphy*, [1896] 1 I. R. 65, at a meeting of a dispensary committee, an agreement in writing for the purchase by them as agents for the guardians from the defendant of a plot of land for a doctor's residence and dispensary, was signed by the defendant and by the chairman on behalf of the committee, but the committee had at that time no authority from the guardians to contract for the purchase of land, and the defendant subsequently withdrew his offer, and refused to carry out the agreement. After such withdrawal and refusal the agreement was approved by the guardians, but neither the agreement nor the approval was under seal. It was held (following the *Kidderminster* and the *Oxford Cases, supra*, and distinguishing *Bolton Partners* v. *Lambert, supra*), that the guardians were not entitled to specific performance. A contract must be ratified within a reasonable time after acceptance by an unauthorised person, and that such reasonable time cannot extend after the time at which the contract is to commence (*Metropolitan Asylums Board* v. *Kingham & Sons* (1890), 6 T. L. R. 217. See also *In re Portuguese Consolidated Copper Mines, Ltd.* (1890), 45 Ch. D. 16 ; *Dibbins* v. *Dibbins*, [1896] 2 Ch. 348). Nor will ratification prevail so as to make unlawful an act which at the time of its performance was lawful (see *Bolton Partners* v. *Lambert*, *supra*, at p. 307 of the report in the Law Reports) ; or where the interests of parties other than the parties to the contract would be affected (*Ford* v. *Newth*, [1901] 1 Q. B. 683).

See also a recent decision as to the validity of a contract made by the electric lighting committee of a metropolitan borough council, *Bourne and Hollingsworth* v. *Marylebone Borough Council* (1908), 72 J. P. 306.

Defence of "no seal" should be pleaded.

If a corporate body wish to rely on the defence that the contract sued upon is not under their common seal, such defence should be specifically pleaded (Order XIX., rr. 15, 20).

Contracts of urban authorities when acting under this Act.

Writing and seal, when obligatory.

The provisions of sub-s. (1) of s. 174 of the Public Health Act, 1875, *ante*, p. 843, are imperative and not directory only. Where a local board engaged with a builder to perform certain works with reference to a sewer, but there was no contract under seal, it was held that though the works were executed no action could be maintained on the contract. The court proceeded upon the ground that the local board must charge the rates with the cost of the contract, and that they could not do so unless they fulfilled the exigencies of the statute by entering into the contract in strict conformity with its requisitions (*Frend* v. *Dennett* (1858), 4 C. B. (N.S.) 576). And the Court of Chancery afterwards decided that relief in equity could not be given to the contractor (5 L. T. (N.S.) 73). See, however, *Bournemouth Commissioners* v. *Watts*, cited *post*, p. 850, as to the power of a local authority to act under an insufficient contract. In a case decided in 1878, the facts were as follows: The defendants, an urban authority, verbally directed their surveyor to employ the plaintiff to prepare plans for offices. The plans were prepared by the plaintiff, and the defendants advertised for tenders for building the offices in accordance therewith, but when these were sent in it was found that the plaintiff's plans were upon too extensive a scale, and the intended offices were not erected. There was no ratification under seal of the act of the defendants' surveyor in procuring the plans. At the trial, the jury found that the offices were necessary for the purposes of the defendants, and the plaintiff's plans were necessary for the erection of the buildings for which they were designed. It was held by the Court of Appeal, affirming the decision of LINDLEY, J., that assuming the contract was founded on an executed consideration, the plaintiff could not recover, for the section was imperative (*Hunt* v. *Wimbledon Local Board* (1878), 4 C. P. D. 48). This decision has since been considered and followed by the House of Lords; that august tribunal has held that the provisions of this paragraph are obligatory and not merely directory and apply to an executed contract of which the urban authority have had the full benefit and enjoyment, and which has been effected by their agent duly appointed under their common seal (*Young* v. *Leamington Corporation* (1883), 8 App. Cas. 517). It is sufficient, however, if the contract is ratified under seal. This was decided in a case where the facts were as follows: The corporation of Torquay petitioned for the extension of the borough by the inclusion within it of the whole or part of the urban district of Cockington, whose council retained the plaintiffs to act as solicitors and parliamentary agents for the purpose of the opposition. The Bill for the extension of the borough was passed, and received the Royal assent on July 30th, 1900, and any liability of Cockington to the plaintiffs was, on the dissolution of the Cockington council, transferred to the defendants. The plaintiffs' bill was delivered to Cockington on November 8th, 1900, and a copy was sent to defendants on November 26th, 1900. Resolutions—not sealed—of the Cockington council were passed from time to time from May 18th, 1900, and communicated to plaintiffs. On September 6th, 1900, the Cockington council resolved that the seal of the council should be, and it was, affixed to such resolutions. The plaintiffs' claim included items for work done and disbursements made after the sealed retainers were received by the plaintiffs. It was held that the confirmation under seal of the original retainers created an obligation binding upon the council without any new consideration; that it was not *ultra vires* for them to bind themselves to pay by an instrument under seal; that the confirmation under seal on September 6th, 1900, of the earlier unsealed retainers was sufficient to satisfy the requirements of s. 174 (*Brooks, Jenkins & Co.* v. *Torquay Corporation*, [1902] 1 K. B. 601). It was in the same case held that it is not necessary that the other contracting party should seal the contract.

A petition was presented by the plaintiffs and the defendants to the Local Government Board, stating an agreement whereby the plaintiffs were to transfer to the defendants certain land forming part of the plaintiffs' district, on condition that the defendants should adopt a certain road and dedicate it as a public highway. The agreement referred to was not under seal, but the petition was sealed with the common seals of the plaintiffs and the defendants. The cost of completing the road was estimated at over £50. On action for specific performance of the agreement it was held that under the above section the agreement must be under seal, and that the petition though under seal was not a deed, and, therefore, was not a contract under seal within the section. It was held further, that if the deed was valid the local authority had no power to enter into an agreement for the dedication of a road or a street as a highway (*Tunbridge Wells Improvement Commissioners* v. *Southborough Local Board* (1888), 60 L. T. (N.S.) 172).

Where an urban authority are also a municipal corporation, they are but one corporate body (*Andrews* v. *Ryde Corporation* (1874), L. R. 9 Ex. 302); but when acting as an urban sanitary authority their contracts are governed by the above section and not by the general law as to the contracts of corporate bodies (*Young* v. *Leamington Corporation*, *supra*).

Limit of value.

The provisions of this sub-section do not apply to a contract under £50. Such a contract may be made by parol (*per* BRAMWELL, L.J., in *Hunt* v. *Wimbledon Local Board*, *supra*, and *per* LINDLEY, L.J., in *Young* v. *Leamington*, *supra;* see 8 Q. B. D., at p. 585). The paragraph applies only to a contract in which the parties, at the time of entering into it, contemplate that it shall exceed that sum. Therefore, when scarlet fever had broken out, and an urban authority appointed a committee under s. 200, and a medical man agreed verbally with the committee on behalf of the urban sanitary authority to attend patients at the rate of 5*s.* 2*d.* per tent per day, and attended until the amount due was nearly £100, it was held, affirming the judgment of STEPHEN, J., that although more than £50 became due it was not a contract "whereof the value or amount exceeds £50" within the meaning of the section, because at the time of entering into it the parties had not ascertained that it would exceed £50, and that the urban authority were liable to the medical man (*Eaton* v. *Basker* (1881), 7 Q. B. D. 529. See also *Wood* v. *East Ham Urban District Council* (1907), 71 J. P. 129, where COLLINS, M.R., appeared to incline to the view that the engagement of an officer under s. 189 at a salary of over £50 was not necessarily within the paragraph.

It would appear that under certain circumstances the paragraph may not apply even when the parties contemplate the making of a contract the value whereof may exceed £50. A firm of coal merchants tendered for the supply to an urban district council of coals which it was thought would exceed in value £100. The tender contained stipulations that if it was accepted a formal contract should be executed, and that a bond with two sureties should be entered into. The tender was accepted, subject to the formal contract and bond being duly executed. The contract and bond were forwarded to the coal merchants, but were never executed. The coal merchants afterwards, from time to time, supplied quantities of coal which were accepted, the value of the coal supplied not amounting, in any one instance, to £50, but amounting in the aggregate to over £50. It was held that the council were bound to pay, under an implied contract, for each lot of coal so supplied and accepted (*Spencer & Co.* v. *Southall Norwood Urban*

District Council (1905), 69 J. P. 308). The last-mentioned decision went on the ground that there was no acceptance of the tender pending the execution of a formal contract, and therefore nothing constituting a contract to which the provisions of the statute could apply, with the result that there was only a contract on each occasion of the order and supply of goods.

The defendants, an urban authority, by contract not under seal, employed the plaintiffs as engineers to do certain work. The plaintiffs performed part of the work, exceeding in value £50, and then required the defendants to affix their seal to the contract. This the defendants did, believing that it was for the benefit of the ratepayers of the district that the contract should be completed. It was held by CAVE, J., that as part of the work was unperformed when the seal was affixed, and there was consideration for affixing it in the plaintiffs' promise to complete the work, it was competent for the defendants to constitute the contract a good contract under seal within s. 174 in respect of the work already done; and, therefore, that the plaintiffs were entitled to maintain their action for the value of that work (*Melliss* v. *Shirley Local Board* (1885), 14 Q. B. D. 911). (Note that the decision in this case was reversed upon another point: (1885), 16 Q. B. D. 446.) See also *Brooks, Jenkins & Co.* v. *Torquay Corporation*, *ante*, p. 848, in which it was held that, even without a new consideration, there may be a binding confirmation under seal.

Compromise of claim: variations ordered under contract for execution of works.

Where an urban authority enters into a contract in writing, sealed with the common seal of such authority, pursuant to ss. 173, 174 of the Public Health Act, 1875, with a contractor for the construction by him of sewerage works, and the contract contains the usual power for the engineer, who has the control and supervision of the works, to vary, alter, enlarge, or diminish any of them, all variations and alterations coming within the terms of the power conferred on the engineer can be validly made without being under the common seal of the authority. An agreement between an urban authority and a contractor employed to construct works for them, as a compromise and in full settlement of all claims by him against the urban authority is not a contract within s. 173 of the Public Health Act, 1875, necessary for carrying that Act into execution, so as to require to be sealed with the common seal of the urban authority under s. 174; and therefore such agreement, though not under seal, is capable of being enforced against the urban authority (*Williams* v. *Barmouth Urban Council* (1897), 77 L. T. (N.S.) 383. See also *Hunt* v. *Acton Urban District Council*, 72 J. P. 345 and *Bell* v. *Bridlington Corporation* (1908), 72 J. P. 453).

Compromise of action.

An agreement by a local board compromising an action is not within this section, and is not void by reason of its not being under seal (*Attorney-General* v. *Gaskill* (1882), 22 Ch. D. 537). And see *Williams* v. *Barmouth Urban Council*, *supra*.

Contract not under seal not void.

1 Vict. c. 78, s.44 (repealed and substantially re-enacted by the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50, s. 141), after reciting that it was expedient to give all persons interested in the borough fund of every borough a more direct and easy remedy for any misapplication of such fund, provided that any order of the council of any borough for the payment of money out of the borough fund might be removed into the court by *certiorari*. A resolution was passed by a corporation ordering the payment of certain sums, each exceeding £50, to contractors for costs incurred in paving a street, no contract having been entered into under the seal of the corporation. On an application for a *certiorari* to bring up and quash such resolution on the ground that it was a misapplication of the borough funds under the Act above cited, it was held that as the work was useful and done at a reasonable cost, and there was no suggestion of corruption or partiality there had been no misapplication, and the Court in its discretion refused to grant the *certiorari* (*R.* v. *Norwich Corporation* (1882), 46 J. P. 308, n; 30 W. R. 752). From this case and that of *R.* v. *Prest* (1850), 16 Q. B. 32, it is to be inferred that a contract for over £50, though it may not be enforceable by reason of not being under seal, is nevertheless not absolutely void. This view of these decisions was adopted by the Court in *Bournemouth*

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Commissioners v. *Watts* (1884), 14 Q. B. D. 87. There in an action by a local authority to recover paving expenses under s. 150, it appeared that part of the work to an amount exceeding £50, had been done by contractors who had no contract under seal. It was held that this was no defence to an action for recovery of the expenses. It is to be observed, however, that it is difficult to reconcile this decision with the judgments in *Frend* v. *Dennett*, *ante*, p. 847. See, however, *Brooks, Jenkins & Co.* v. *Torquay Corporation*, *ante*, p. 848, where the principle of the Bournemouth case was applied.

Necessity for seals of both parties to contract.

"The enactment relates to a contract which is the act of both parties, and is applicable not to one of them alone, but to both of them. I do not mean to say that the section makes anything particularly necessary upon the part of the contractor, but it requires that the evidence of the obligation of the two parties must be in writing and sealed with their seals" (*per* BRAMWELL, L.J., in *Hunt* v. *Wimbledon Local Board*, *ante*, p. 847). The above opinion of BRAMWELL, L.J., was not required for the decision of the case, and in *Brooks, Jenkins & Co.* v. *Torquay Corporation*, *ante*, p. 848, it was held that a local authority may be liable under a contract which they have sealed even though it is not signed by the other party.

Sealed acceptance of tender constituting contract.

A valid contract might under certain circumstances be made by sealing an acceptance of a tender, *i.e.*, where nothing else remains to be done. In very many instances, however, the sealing of an acceptance of a tender will be quite inoperative, and a recent case may be referred to as illustrative of this. In March, 1901, the defendant council advertised for tenders for the carrying out of certain sewerage works. One of the conditions was that the person tendering should undertake to execute a contract for the due performance of the works and enter into a bond with two responsible sureties for the due and satisfactory completion of the works. The plaintiff tendered for the work, and on May 10th, 1901, the council resolved that the plaintiff's tender should be accepted, and they instructed their clerk to write to the plaintiff to that effect, and to affix the seal of the council to the letter. Such letter was duly sent. It was held that the acceptance of the tender did not conclude a contract between the parties, for a formal contract was expressly provided for and some important details were left unsettled (*Bozson* v. *Altrincham Urban District Council* (1903), 67 J. P. 397).

Stamp duty.

11 & 12 Vict. c. 63, s. 151, exempted the contracts of local authorities from stamp duty. That exemption was taken away by 35 & 36 Vict. c. 79, s. 42, and has not been restored.

Penalty clause not obligatory.

Until recently it was believed that the provision in s. 174 (2) of the Public Health Act, 1875, that every contract made by an urban authority whereof the value or amount exceeds £50, "shall specify some pecuniary penalty to be fixed in case the terms of the contract are not duly performed" was obligatory, and not merely directory; and that if such penalty was not specified, an action on the contract against an urban authority could not be maintained (*British Insulated Wire Co.* v. *Prescott Urban District Council*, [1895] 2 Q. B. 463). The plaintiffs in this case appealed, but terms were agreed on and the appeal was dismissed without any judgments being delivered. See [1895] 2 Q. B. 538. And see *Murray* v. *Uxbridge Urban District Council*, Times, March 21st, 1896). A majority of the Court of Appeal have, however, now decided that the provision is only directory (*Soothill Upper Urban District Council* v. *Wakefield Rural District Council*, [1905] 2 Ch. 518). In this case, when in the Court below, SWINFEN EADY, J., held that the whole of sub-s. (2) applies only to cases where work, materials, matters or things are to be furnished, had or done to or for an urban authority for a price in money to be paid by such authority ([1905] 1 Ch. 53).

Surveyor's estimate and report.

Sub-sect. (3) is only directory, because it is something for the urban authority only to do, and the obtaining of the estimate and report from the surveyor is not a condition precedent to entering into the contract. Therefore an urban district council will be liable for the breach of a contract entered into for the performance of works, though the estimate and report are

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not obtained (*Nowell* v. *Worcester Corporation* (1854), 9 Ex. 457. And see *Young* v. *Leamington Corporation*, *ante*, p. 847). With regard to this sub-section the Court of Queen's Bench decided that as between the local board and their constituents, "If the work may be both executed and repaired under the provisions of the Act, there must be an estimate and report on the execution *and* the repair; but if the work may be only executed, *or* only repaired according to the provisions of the Act, the estimate and report need not extend to a work not within the provisions of the Act, and not necessary for carrying it into execution. In the case of a contract for repairing an existing road, an estimate and report relating to executing the work of making that road originally would be absurd, and equally so would the estimate and report on repair where none can be done" (*Cunningham* v. *Wolverhampton Local Board* (1857), 7 El. & Bl. 114).

Notice and tenders.

Sub-sect. (4) is directory only. This and the preceding sub-section relate to "things to be done before contracts are entered into, and done by the urban authority, the contractor having nothing to do with the matters mentioned" (*per* Lord BRAMWELL, in *Young* v. *Leamington Corporation*, *ante*, p. 847).

Contract guaranteeing revenue of water company.

The Local Government Board have expressed the opinion that a district council may, if they see fit, give a water company within whose area of supply their district is situate, a guarantee such as will ensure the receipt by the company of the minimum revenue recognised in s. 35 of the Waterworks Companies Act, 1847, and they may enter into contracts for the supply of water in pursuance of which specified payments may be made to the company.

Mortgage debt of local authority, nature of.

The Corporation of Preston, as the local board of health, in exercise of their powers under the Preston Waterworks Act, 1853 (16 & 17 Vict. c. xlviii.), and the Preston Improvement Act, 1869 (32 & 33 Vict. c. lxxxvii.), and in consideration of £150, mortgaged to the testatrix, "her executors administrators and assigns such proportion of the rents rates and waterworks which by the said Acts" were authorised, as the principal sum bore to the whole sum borrowed, to hold until the principal sum and interest should be paid and satisfied:—*Held*, that such mortgage was in substance a mortgage of the general undertaking, and did not confer upon the testatrix an interest in land within the Mortmain Acts; and consequently that the mortgage debt was pure personalty, and passed under a bequest in her will for charitable purposes (*In re Parker*, *Wignall* v. *Park*, [1891] 1 Ch. 682). See also *In re Pickard*, *Elmsley* v. *Mitchell*, [1894] 3 Ch. 704; and *In re Crossley*, [1897] 1 Ch. 928. Impure personalty may, however, now be given or disposed of by will for charitable purposes. See the Mortmain and Charitable Uses Act, 1891 (54 & 55 Vict. c. 73).

For certain valuable suggestions of the late Sir Robert Rawlinson with regard to water supply, see *post*, p. 945.

Restriction on construction of waterworks by local authority.

52. Before commencing to construct waterworks within the limits of supply of any water company empowered by Act of Parliament or any order confirmed by Parliament to supply water, the local authority shall give written notice to every water company within whose limits of supply the local authority are desirous of supplying water, stating the purposes for which and (as far as may be practicable) the extent to which water is required by the local authority.

It shall not be lawful for the local authority to construct any waterworks within such limits if and so long as any such company are able and willing to supply water proper and sufficient for all reasonable purposes for which it is required by the local authority; and any difference as to whether the water which any such company are able and willing to lay on is proper and sufficient for the purposes for which it is

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For definition of "water company," and "waterworks," see *ante*, p. 841.

The Public Health Act, 1848, s. 75, had placed certain restrictions in the way of local authorities before constructing waterworks "within any limits within, for or in respect of which any waterworks company shall have been established for supplying water." The restrictions now imposed by the section in the text are confined to the case of water companies having parliamentary powers within the district of the local authority.

Notwithstanding the above section, a local authority may construct works for supplying themselves with water for their own use, *e.g.*, in connection with a system of sewerage within the limits of supply of a statutory water company (*West Surrey Water Co.* v. *Chertsey Union Guardians*, [1894] 3 Ch. 513).

The restriction on the construction of waterworks imposed by the above section applies only to new waterworks, and does not apply to additions to, or improvements in, existing waterworks (*Cleveland Water Co.* v. *Redcar L. B.*, [1895] 1 Ch. 168).

A local authority having a system of waterworks in their own hands had an area added to their district by order of the county council under the Local Government Acts, 1888 and 1894. Within this area, the Huddersfield corporation were empowered by Act of Parliament to supply water. The local authority, without giving the notice required by the above section, proceeded to lay pipes for the supply of the added area. It was held that this was a constructing of waterworks within the meaning of s. 52, and an injunction was granted (*Huddersfield Corporation* v. *Ravensthorpe U. D. C.*, [1897] 2 Ch. 121). It should be mentioned that in the order of the county council in the last-mentioned case, no express provision was made as to the supply of water in the added area. This apparently might have been made. See *Brighton Intercepting and Outfall Sewers Board* v. *Hove Corporation*, (1904), 68 J. P. 565.

In the case of *Newhaven and Seaford Water Co.* v. *Newhaven L. B.* (1882), Times, Jan. 21st, 1882; Law Times Journal, Jan. 28th, 1882; Local Government Chronicle, 1882, p. 515, it appeared that in July, 1880, an individual obtained a provisional order empowering him to construct waterworks to supply water to certain places, including the town and parish of Seaford, and that about the same time another individual obtained another provisional order to supply certain places, including the parish of Newhaven. Subsequently these powers were by arrangement amalgamated, and a new provisional order was obtained, and was confirmed by an Act which received the royal assent on August 11th, 1881. About that time the Newhaven local board was formed, its first meeting having been on August 10th, 1881. On August 19th, 1881, the board gave notice to the individual undertakers under the amalgamated provisional order that they were about to construct waterworks. The plaintiff company were not registered until November 12th, 1881, but previously to such registration a contract had been entered into with the undertakers on behalf of the company for the transfer to the company of the undertaking, and by their memorandum and articles the company were empowered to acquire those rights. The company commenced their action for injunction to restrain the local board from constructing waterworks, and it appeared at the hearing that £5,000 had already been expended by the company on the works, and it was stated that they could be completed within five months. The contention of the plaintiffs was that they were a company "able and willing" within the meaning of s. 52. For the local board it was contended that the company were not "able and willing," because they had no completed works available. HALL, V.-C., granted the injunction, and in giving judgment said that "the scope and effect of the 52nd section was that the local authority were not to throw away the money of the ratepayers in constructing waterworks where there was an existing body which could provide a proper water supply without recourse being had to such money. It was an unreasonable construction of the section to hold that a company were not 'able and willing' to supply water unless they had all the works for such a purpose executed and completed down to the very minutest detail. He was satisfied upon the evidence that the plaintiffs were a company 'able and willing' to provide a proper supply within the meaning of the section, and the local authority ought, therefore, to hold their hands, and not rush into expense that might prove unnecessary." See also *Bognor Waterworks Co.* v. *Bognor L. B.* (1893), 70 L. T. 402, and the judgment of CHITTY, J., in *Cleveland Water Co.* v. *Redcar L. B.*, *supra*.

Where company R. had the necessary powers but no water, and company S. had the requisite supply of water but no powers within the district, and company R. sold its plant to company S., and certain members of company S. bought all the shares in company R., with the intention of allowing company S. to exercise the powers of company R., it was held, that the powers could not be so delegated, and that neither company was "able and willing" within the meaning of the Act, and, consequently, that neither was entitled to notice under s. 75 of the Public Health Act, 1848 (11 & 12 Vict. c. 63), or s. 52 of the Public Health Act, 1875 (38 & 39 Vict. c. 55). Sect. 75 of the Public Health Act, 1848, is not materially extended by s. 52 of the Public Health Act, 1875; and therefore a local authority desiring to construct waterworks, and having, before the passing of the latter Act, given the notices required by s. 75 of the former Act, is not, in consequence of the passing of the latter Act, required to give the notice under s. 52 of that Act (*Richmond Waterworks Co. and the Southwark and Vauxhall Waterworks Co.* v. *Vestry of Richmond* (*Surrey*) (1876), 3 Ch. D. 82).

In *In re Yeadon L. B. and Yeadon Waterworks Co.* (1888), 59 L. T. 844, the local board served notice under s. 52 requiring the company to supply each house in their district with water suitable and proper for drinking and ordinary domestic purposes at the rate of not less than twenty gallons per head per day. This not being complied with, the board served the company with notice of appointment of an arbitrator under ss. 179 and 180. On the hearing before an umpire the company attempted to limit the scope of the inquiry to the liability of the company to supply twenty gallons per head per day, but this was negatived by the umpire. KAY, J., refused to set aside the award, and, of the matters covered by an arbitration under s. 52, remarked, "So we may take the purposes to be these: their ability to supply proper water; their willingness to supply proper water; their ability to supply sufficient water; their willingness to supply sufficient water; and the reasonableness of the purposes." In the Court of Appeal this case turned entirely upon the question whether the award of the umpire was made in time; and it was held that although no original limit of time is specially mentioned in the Act of 1875 within which an umpire must make his award, yet by analogy to the original limit fixed in the case of arbitrators, an original limit of twenty-one days from the date of the reference to him must be inferred to have been fixed in the case of an umpire; which, under s. 180 (9), may not be extended beyond two months. It appeared that the two arbitrators met on January 3rd and extended the time for making their award until February 20th. On January 10th they appointed an umpire. On February 1st the arbitrators met and were attended by the parties; but one of the arbitrators retired and refused to proceed any further, and the meeting was adjourned *sine die*. On April 19th the umpire made his award. The Court of Appeal held that the date from which the twenty-one days must be reckoned was February 1st, when the arbitrators finally disagreed, and not February 20th when their powers expired. It was held, therefore, that the award was made too late, and that it must be set aside (*In re Yeadon L. B. and Yeadon Waterworks Co.* (1889), 41 Ch. D. 52). *Cf. Knowles & Sons, Limited* v. *Bolton Corporation*, [1900] 2 Q. B. 253, where it was held by the Court of Appeal that the court has power under s. 9

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of the Arbitration Act, 1889, to enlarge the time for making an award beyond two months from the date of the submission, notwithstanding s. 180 of the Public Health Act, 1875.

In the case of the *Corporation of Wolverhampton* v. *Bilston Commissioners*, [1891] 1 Ch. 315, it appeared that the undertaking, rights, and liabilities of a waterworks company were transferred to the Corporation of Wolverhampton. The company were then supplying Bilston township with water, and had made an agreement, in 1866, with the commissioners, which was adopted by the corporation and confirmed by the Act of transfer. There was no express provision in the Act as to the application of the profits arising from the waterworks undertaking. By subsequent legislation the profits of the waterworks were to be transferred to the borough improvement fund, or, at the option of the corporation, to be applied in reducing the price of water to consumers. The commissioners seeking to construct waterworks of their own, this action was brought by the corporation to restrain them. Defences of both fact and law were raised. It was arranged that the trial of the issues relating to certain parts of the defence should be postponed, and that the following questions of law, raised by the defendants, should be now tried, viz., whether under the agreement of 1866, the commissioners were bound to take their supply of water exclusively from the corporation; and whether, if they were free to supply themselves, they were trammelled by s. 52 by reason of the corporation being a "water company" within the meaning of that section, regard being had to the interpretation section (s. 4) which defined "water company" to mean "any person or body of persons corporate or incorporate, supplying, or who may hereafter supply, water for his or their own profit." NORTH, J., decided the first point in the affirmative, and as to the second he held that the corporation were a "water company" within the meaning of s. 52. On appeal, the case was decided exclusively on the first point, and the second point was not entered upon (7 T. L. R. 374).

Under the Bognor Waterworks Company's Act of 1891 (modifying s. 52 of the Public Health Act, 1875) it was, as the court construed the provision, unlawful for the defendant local board to construct waterworks within the plaintiffs' limits of supply during four years from the passing of the special Act, so long as the plaintiffs were able and willing to supply water proper and sufficient. The plaintiffs made some unsuccessful attempts to find water, and before they succeeded in doing so the defendant board served them on May 20th, 1893, with notice of the board's desire to supply water within their own district, and their intention of constructing waterworks under the provisions of the Public Health Act, 1875. The notice further stated that if not informed within a month of the plaintiffs' ability and willingness, the board would construct works. The matter was referred to arbitration, but the company, becoming aware that the board were still forwarding a scheme of water supply, moved in an action to restrain the board from commencing or threatening to construct works and from proceeding to arbitration. The motion stood over on terms to await the award. The arbitrators found that the company were "able and willing," and that the water was proper and sufficient:—*Held*, that the defendants must pay the costs of the action, setting off any costs incurred by the defendants by reason of the plaintiffs seeking an injunction to restrain the arbitration (*Bognor Waterworks Co.* v. *Bognor L. B.* (1893), 70 L. T. 402).

It is usual to insert in Acts empowering water companies a clause authorising the local authority to supply, in case of the company failing to afford a sufficient supply. For the form of the clause, see *ante*, p. 709.

A water board was constituted by special Act with the right of supplying water within the boundaries of two boroughs and certain outlying districts, provided that when so required by the sanitary authority of any such outlying district the board should sell to such sanitary authority the mains, pipes and fittings belonging to the board within that district at a price to be fixed, in default of agreement, by an arbitrator, and that after such sale the board should cease to supply water within such district. In an arbitration under this proviso, between the board and an outlying district, it was held by the House of Lords, that in fixing the price the basis of calculation should be merely the value of the mains, pipes and fittings regarded as plant *in situ*, capable of earning a profit, and that the arbitrator must not include in the price compensation to the board for the loss of the right to supply water in the outlying district after the sale (*Stockton and Middlesborough Water Board* v. *Kirkleatham Local Board*, [1893] A. C. 444).

The predecessors of the Burslem Corporation purchased a gas undertaking under the powers of a special Act of 1877, which provided that the limits of the Act should include (*inter alia*) the township of Wolstanton, provided that nothing in the Act should prejudice any application by any sanitary authority formed for or to include that township for parliamentary powers to supply the township with gas, and that if such powers were granted the predecessors of the corporation should sell, and the sanitary authority should purchase, all mains, pipes and other works within the township at a price to be fixed in default of agreement by arbitration. By a special Act of 1906, the Wolstanton United Urban District Council were empowered to supply gas in their district. Sect. 9 of the Act provided, by sub-s. (1), that the corporation should sell, and the council should purchase, all the mains, pipes and other works within the district, and that upon the completion of the purchase all rights of the corporation to supply gas within the district should cease. By sub-s. (2) it was provided that the sale should be for such "price and consideration" as should be agreed upon, or, failing agreement, as should be determined by arbitration in accordance with the provisions of the Lands Clauses Acts with reference to the taking of lands otherwise than by agreement, and that in the construction of the said provisions the expression "lands" should mean "the mains, pipes and other works aforesaid." Upon a case stated by an umpire appointed under the Lands Clauses Consolidation Act, 1845:—*Held*, that the corporation were not entitled to compensation (1) for severance of the mains, pipes and works in the district from their other mains, pipes and works; (2) for loss of revenue caused by the cessation of their power to supply gas within the district (*In re An Arbitration between the Wolstanton United Urban District Council and Burslem Corporation* (1907) 72 J. P. 28).

As to construction of reservoirs.

53. At least two months before commencing to construct under the provisions of this Act any reservoir (other than a service reservoir or tank which will hold not more than one hundred thousand gallons) the local authority shall give notice of the intended work by advertisement in one or more of the local newspapers circulated within the district where the reservoir is to be constructed.

If any person who would be affected by the intended work objects to such work, and serves notice in writing of such objection on the local authority at any time within the said two months, the intended work shall not be commenced without the sanction of the Local Government Board, after such inquiry as hereinafter mentioned, unless such objection is withdrawn.

The Local Government Board may, on application of the local authority, appoint an inspector to make inquiry on the spot into the propriety of the intended work and into the objections thereto, and to report to the Local Government Board on the matters with respect to which such inquiry was directed; and on receiving the report of such inspector, the Local Government Board may make an order disallowing or allowing, with such modifications (if any) as they may deem necessary, the intended work.

As to the powers of the Local Government Board to conduct inquiries by means of their inspectors, see ss. 293—296 of the Act of 1875.

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As s. 57, *infra*, incorporates the Waterworks Clauses Act, 1863, the whole of the provisions of that Act with reference to security of reservoirs will apply to reservoirs constructed or maintained by a local authority. As to these provisions, see *ante*, p. 536.

A suggested form of notice for use under this section will be found in the Encyclopædia of Local Government Board Requirements and Practice, by Wood and Johnson, at p. 859. The following note as to the practice and procedure under this section is taken from that useful work:—

> "If the local authority propose to apply to the Local Government Board for sanction to a loan under the Public Health Act, 1875, for the execution of works of water supply (including the construction of a reservoir to hold more than 100,000 gallons), they should give the notice required by s. 53 as soon as possible, as it is the usual practice of the Local Government Board to defer arranging for a local inquiry to be held with regard to the application for sanction to the loan until the time allowed by the statute for the service of objections has expired, in order to avoid the further inquiry which would be necessary in the event of any objection being made under the section and not withdrawn.
>
> "Immediately after the expiration of the period allowed by the statute for the service of objections, the Board should be furnished with a copy of the newspaper (or newspapers) containing the advertisement of the notice, and with a copy of any notice of objection that may have been served on the local authority. If no such objection has been made this should be stated; but if any such objection has been made and not withdrawn, a copy of a resolution of the local authority requesting the Local Government Board to appoint an inspector to make the inquiry and report contemplated by the section should be forwarded."

Power of carrying mains.

54. Where a local authority supply water within their district, they shall have the same powers and be subject to the same restrictions for carrying water mains within or without their district as they have and are subject to for carrying sewers within or without their district respectively by the law for the time being in force.

Works *within* district.

For the construction *within* their district, the powers of the Public Health Act, 1875 (38 & 39 Vict. c. 55), are of themselves sufficient. Sect. 16 of the Act provides as follows:—

Powers for making sewers.

> Any local authority may carry any sewer through across or under any turnpike road, or any street or place laid out as or intended for a street, or under any cellar or vault which may be under the pavement or carriageway of any street, and, after giving reasonable notice in writing to the owner or occupier (if on the report of the surveyor it appears necessary), into through or under any lands whatsoever within their district.
>
> They may also (subject to the provisions of this Act relating to sewage works without the district of the local authority) exercise all or any of the powers given by this section without their district for the purpose of outfall or distribution of sewage.

Sect. 18 gives power from time to time to enlarge, lessen, or alter the course of, or improve or discontinue, any such sewer.

Works *without* district.

With regard to works *without* the district of the local authority, three months' notice of the intended work is necessary, and in case of opposition the sanction of the Local Government Board must be obtained. The provisions of the Act on this point are as follows:

Notice to be given before

> 32. A local authority shall, three months at least before commencing the construction or extension of any sewer or other work for sewage

purposes without their district, give notice of the intended work by advertisement in one or more of the local newspapers circulated within the district where the work is to be made.

commencing sewage works without district.

Such notice shall describe the nature of the intended work, and shall state the intended termini thereof, and the names of the parishes, and the streets, and other lands (if any) through across under or on which the work is to be made and shall name a place where a plan of the intended work is open for inspection at all reasonable hours; and a copy of such notice shall be served on the owners or reputed owners, lessees or reputed lessees, and occupiers of the said lands, and on the overseers of such parishes, and on the surveyors of highways, or other persons having the care of such roads or streets.

In case of objection, works not to be commenced without sanction of Local Government Board.

33. If any such owner, lessee, or occupier, or any such overseer, surveyor, or other person as aforesaid, or any other owner, lessee, or occupier who would be affected by the intended work, objects to such work, and serves notice in writing of such objection on the local authority at any time within the said three months, the intended work shall not be commenced without the sanction of the Local Government Board after such inquiry as hereinafter mentioned, unless such objection is withdrawn.

Inspector to hold inquiry and report to Local Government Board.

34. The Local Government Board may, on application of the local authority, appoint an inspector to make inquiry on the spot into the propriety of the intended work and into the objections thereto, and to report to the Local Government Board on the matters with respect to which such inquiry was directed, and on receiving the report of such inspector the Local Government Board may make an order disallowing or allowing, with such modifications (if any) as they may deem necessary, the intended work.

Some words omitted from the above sections are repealed by the Statute Law Revision Act, 1898 (61 & 62 Vict. c. 22).

The order of the Local Government Board here contemplated is of the same nature as the order contemplated by s. 53, *ante*, p. 855, as to the construction of reservoirs. It will be "binding and conclusive in respect of the matters to which it refers" (s. 295 of the Public Health Act, 1875).

Not necessary to acquire land or easement.

In order to enter on land and lay pipes in pursuance of the section in the text, it is not necessary that the local authority should take the land or should purchase any easement. The only condition is the making of compensation. See *Thornton* v. *Nutter* (1867), 31 J. P. 419; *Roderick* v. *Aston L. B.* (1877), 5 Ch. D. 328; *Swanston* v. *Twickenham L. B.* (1879), 11 Ch. D. 838; *Escott* v. *Newport Corporation*, [1904] 2 K. B. 369, and the following cases decided under an analogous section (s. 135) in the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120): *N. L. Rail. Co.* v. *Metropolitan B. of W.* (1859), Johns. 405; *Hughes* v. *Metropolitan B. of W.* (1861), 4 L. T. (N.S.) 318. The same view has been taken of the corresponding sections of the Public Health (Scotland) Act, 1897 (*Caledonian Rail. Co.* v. *Perth District Committee* (1901), 38 Sc. L. R. 748; 3 F. 1029), and in a recent case where a local authority, having power under a local Act to erect and maintain electric cable standards "on, in, over or under any street or road," erected such a standard in the pavement, it was held that their Act, although the standard was sunk in the soil to a considerable depth, did not amount to a "taking of land" (*Escott* v. *Newport Corporation*, *supra*). Although the remedy of a person who sustains damage by the laying of a water main in his lands is by claiming compensation under s. 308 of the Public Health Act, 1875, yet the local authority are liable in damages to any person who sustains injury by reason of their negligence in laying the main. See the notes to s. 308, *post*, and the cases there cited, especially *Clothier* v. *Webster* (1862), 6 L. T. 461. And as to the liability of a local authority for the negligence of their contractor in laying a sewer [or water main], see the cases cited in the notes to s. 265, *post*, especially *Hardaker* v. *Idle U. D. C.* [1896], 1 Q. B. 335. The power conferred by s. 54 of the Public Health Act, 1875, *ante*, p. 856, is, however, confined to "carrying *water mains*" and

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in this connection the following cases decided as to sewers may be usefully referred to:—A manhole is part of a sewer and may be made without purchasing land for the purpose, the owner of the land being entitled only to compensation for the damages arising from making it (*Swanston* v. *Twickenham L. B., supra*). But an engine house with pump and machinery erected partly above and partly below the level of the ground, for lifting and forcing sewage along a rising main from one part of a district to another where there was a common outfall, is not part of a sewer for the purposes of the section, but is a work for the purpose of receiving and otherwise disposing of sewage within s. 27 of the Public Health Act, 1875, for which the necessary land must be purchased or leased (*King's College, Cambridge* v. *Uxbridge R. D. C.*, [1901] 2 Ch. 768). If an owner of land refuses to allow a local authority to enter his lands for the purpose of laying a water main under the section, it would appear that they ought to commence an action for a declaration of their right to enter, for it seems that s. 305 of the Public Health Act, 1875, does not enable the local authority to obtain from a court of summary jurisdiction an order authorising such entry (*per* COCKBURN, C.J., in *Lamacraft* v. *St. Thomas' Rural Sanitary Authority* (1880), 44 J. P. 441; and see to the same effect *per* DENMAN, J., in *Wheatcraft* v. *Matlock L. B.* (1885), 52 L. T. 356). In exercising their powers of carrying water mains under canals and other properties which are the subject of special protective provisions (see ss. 327 and 332, *post*, pp. 914, 917), the local authority must be careful to obtain all requisite consents.

The plaintiff was the owner of a private road in the Wallasey district, and the defendants, being the urban sanitary authority of that district, and having therefore the control of the streets generally therein, and also power to supply the inhabitants with water, commenced, without the plaintiff's consent, to break up his private road for the purpose of laying down mains. The plaintiff brought an action for injunction:—*Held*, by the Court of Appeal, that the words "where the local authority have not the control of the streets," in s. 57 of the Public Health Act, 1875, which forbids the laying down of pipes in any private road without the consent of the owner, had no application to the defendants, who did have the control of the streets in the districts, and that the defendants had power, under ss. 16 and 54 of the Public Health Act, 1875, to lay down pipes in the plaintiff's private road without his consent, making him proper compensation under s. 308 of the same Act; and held, also, that a private road is a "street" within the meaning of ss. 16 and 54 of that Act (*Hill* v. *Wallasey L. B.*, [1894] 1 Ch. 133). See also *Taylor* v. *Oldham Corporation* (1876), 4 Ch. D. 395; and *cf. Maddock* v. *Wallasey L. B.* (1886), 50 J. P. 404.

Where a local authority entitled under the Public Health Act to supply water is taking steps to supply such water, it does "supply water" within the meaning of s. 54. And where such authority has the consent of the local authority of another district to make sewers or to lay down water mains on land in such other district, they can only do so subject to the provisions of ss. 32, 33, and 34 of the Act of 1875, applicable to such work (*Jones* v. *Conway and Colwyn Bay Joint Water Supply Board*, [1893] 2 Ch. 603). If, however, two or more local authorities are combining under s. 285 for the construction of works of common benefit, the Local Government Board hold the view that notices must not be given unless works are to be constructed in a district outside the jurisdiction of the combining authorities.

Report of surveyor.

An injunction will be granted to restrain a local authority from constructing a water main through private lands, if reasonable notice in writing has not been given, and the surveyor has not reported the construction to be necessary as required by s. 16, *supra* (*New River Co.* v. *Ware Union R. S. A.* (1883), L. J. Notes of Cases, 1883, p. 20). If, however, it appears that the work was done with the owner's consent, the owner would not succeed in obtaining an injunction or damages if the preliminary requirements of the section had not been complied with (see *Long* v. *Fulham Vestry* (1898), 47 W. R. 56).

In *Lewis* v. *Weston-super-Mare L. B.* (1888), 40 Ch. D. 55, it appeared that in December, 1887, the surveyor of the defendants, an urban local authority, died. On January 11th, 1888, the defendants, by resolution, appointed A. P., a civil engineer in their employment, "surveyor to the board until a further permanent surveyor be appointed"; and the appointment was made determinable by a week's notice. On March 21st, 1888, A. P. reported to the defendants that it was "desirable and advisable" that the water main should be carried in a particular direction from one point to another, and that it would be "necessary" to lay it through land belonging to the plaintiff, which was within the district. This report was signed, "your surveyor, A. P." Four days after its date, X. Y. was duly appointed surveyor to the defendants, and A. P., who was a candidate for the office, was retained in their service as waterworks engineer. The report of March 21st was considered and adopted by the board on April 11th, 1888; and in the following month a notice in pursuance thereof was served on the plaintiff that the defendants intended to carry their main through a part of his lands. Upon motion made in an action by the plaintiff for an injunction to restrain the defendants from so doing, it was *held:* first, that the word "necessary" must be construed as meaning "necessary for the efficient discharge of the duty in the way most for the benefit of the public"; secondly, that upon the words of s. 16 of the Act, the person to determine the necessity was the surveyor; and that if the Court found that he had exercised his judgment and had come to a conclusion in good faith, the Court ought not to interfere, even although other courses were shown to be practicable by which the entry on private lands might be avoided; and thirdly, that "the surveyor" mentioned in s. 16 must, in the case of an urban authority, be the fit and proper person duly appointed to be surveyor, under s. 189 of the Act, and no other; and that A. P. was not "the surveyor" of the defendants within the meaning of ss. 16 and 189, but that he was merely "an officer or servant necessary for the efficient execution of the Act" within s. 189; and that, as the report on which the proceedings of the defendants were founded was not the report of "the surveyor," the plaintiff was entitled to an interlocutory injunction. See also hereon *Hutchings* v. *Seaford U. D. C.*, Times, November 11th, 1898; Times, November 6th, 1899; *Cleckheaton U. D. C.* v. *Firth* (1898), 62 J. P. 536, and *Montgomerie & Co.* v. *Haddington Burg* (1907), 45 Sc. L. R. 73; [1908] A. C. 170. See also *Derby* (*Earl of*) v. *Bury Commissioners* (1868—1869), L. R. 3 Ex. 121; and *Roderick* v. *Aston L. B.* (1877), 5 Ch. D. 328; as to the discretion exercisable by the local authority.

The decision in *Lewis* v. *Weston-super-Mare L. B.*, *supra*, was distinguished by KEKEWICH, J., in *Kendal* v. *Lewisham Borough Council* (1903), 67 J. P. 236, where he held that an order made under s. 105 of the Metropolitan Management Act, 1855, is valid if made by the surveyor of the council for the time being, on the ground that in s. 105 the expression is "surveyor for the time being." An appeal herein was settled ((1903) 20 T. L. R. 21).

Notices.

See, as to the form of the notice, *Cleckheaton I. S. H. Society* v. *Jackson* (1866), 14 W. R. 950, and as to the withdrawal of a notice before the work is commenced, *Davis* v. *Witney U. D. C.* (1899), 63 J. P. 279.

Sect. 57, *post*, p. 863, gives to local authorities the powers of breaking up streets conferred by s. 28 of the Waterworks Clauses Act, 1847, as to which see *ante*, p. 454, and *Hill* v. *Wallasey L. B.*, *ante*, p. 858.

Both in urban and in rural districts the council of the district is the surveyor of highways for the purposes of s. 32 (see s. 144 of the Public Health Act, 1875, and s. 25 (1) of the Local Government Act, 1894).

If a water pipe is to pass under a main road, the maintenance of which is in the hands of the county council, notice should be served upon that council. See s. 11 (12) of the Local Government Act, 1888.

See, as to the notice and plan required by s. 32 of the Public Health Act, 1875, the cases cited in the note under s. 31 of the Waterworks Clauses Act, 1847, *ante*, p. 464.

NOTE.

Practice and procedure.

The following statement as to the practice and procedure under s. 32 is taken from the Encyclopædia of Local Government Board Requirements and Practice, by Wood and Johnson, at p. 768 :—

"If a local authority propose to apply to the Board for sanction to a loan under the Public Health Act, 1875, to carry out a scheme involving the construction outside their district of works to which the provisions of s. 32 of the Act apply, they should give the notice required by the section as soon as possible, as it would appear to be the usual practice of the Local Government Board to defer arranging for a local inquiry to be held with regard to the application for sanction to the loan until the time allowed by the statute for the service of objections has expired, in order to avoid the further local inquiry which would be necessary in pursuance of s. 34 of the Act in the event of any objection being made to the intended work outside the district under s. 33 and not withdrawn.

"If, however, for reasons of urgency, in any case in which it is considered improbable that objections will be made to the works, the local authority are anxious that the local inquiry with regard to their application for sanction to the proposed loan should not be delayed, they should, in asking the Local Government Board to arrange for the holding of the inquiry without waiting for the expiration of the time allowed by the statute for the service of objections, explain the grounds of urgency.

"Immediately after the expiration of the period allowed for the service of objections, the following proofs of compliance with the provisions of the statute should be forwarded to the Board :—

"(i.) A statutory declaration, duly stamped with an impressed stamp, showing that the requirements of s. 32 have been complied with. A copy of the newspaper or newspapers containing the advertisement and a copy of the form of notice served on the owners, lessees, and occupiers, and on the overseers and road authorities (if any) should be annexed to the declaration as exhibits.

"(ii.) A copy of any notice of objection which may have been served on the local authority under s. 33. If no such objection has been made, this fact should be stated in the declaration; but if any such objection has been made and not withdrawn, a copy of a resolution of the authority requesting the Local Government Board to appoint an inspector to make the inquiry and report contemplated by s. 34, should be furnished."

Support.

After the decision of the Court of Appeal in *In re Dudley Corporation* (1881), 8 Q. B. D. 86, to the effect that there is under the Public Health Act, 1875, an implied right of subjacent support for a sewer, although it had been decided that there was none such under the Metropolis Management Act, 1855 (*Metropolitan B. of W.* v. *Metropolitan Rail. Co.* (1869), L. R. 4 C. P. 192), the Public Health Act, 1875 (Support of Sewers), Amendment Act, 1883 (46 & 47 Vict. c. 37), was passed. It makes special provisions as to lateral and subjacent support for "sanitary work" as therein defined. See the Act and the note thereunder, *post*, p. 939.

As to supply of water.

55. A local authority shall provide and keep in any waterworks constructed or purchased by them a supply of pure and wholesome water; and where a local authority lay any pipes for the supply of any of the inhabitants of their district, the water may be constantly laid on at such pressure as will carry the same to the top storey of the highest dwelling-house within the district or part of the district supplied.

This section may be compared with s. 35 of the Waterworks Clauses Act, 1847, *ante*, p. 466; and see the cases collected in the note under that section. It will be observed that a water company is by that section required to keep a supply of pure and wholesome water in the "pipes." The above section requires the local authority to keep the same in the "waterworks." See definition of "waterworks," *ante*, p. 841. The section in the text does not in terms confer a right upon any inhabitant to demand a supply; but see s. 53 of the Waterworks Clauses Act, 1847, and ss. 12 and 13 of the Waterworks Clauses Act, 1863. It will be observed that the provision of the section in the text as to constancy of supply and pressure is discretionary.

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The Local Government Board may, if the local authority make default in providing a water supply, take measures for providing a supply at the cost of the local authority under s. 299 of this Act.

By s. 3 of the Public Health (Water) Act, 1878 (*post*, p. 918), a duty is cast on every rural sanitary authority of seeing that every occupied dwelling-house within their district, within a reasonable distance from an available supply of wholesome water, shall be sufficiently supplied with water. The same section provides that nothing therein shall be deemed to relieve the authority from the duty imposed upon them by the Public Health Act, 1875 (38 & 39 Vict. c. 55), of providing their district or any contributory place or part of a contributory place therein, with a supply of water in cases where danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply, and a general scheme of supply is required, and such supply can be got at a reasonable cost. By s. 11 of the Act of 1878 the Local Government Board may invest any urban authority with all or any of the powers of that Act. See *post*, p. 927, as to the duties of parish councils.

Power to charge water rates and rents.

56. Where a local authority supply water to any premises they may charge in respect of such supply a water rate to be assessed on the net annual value of the premises ascertained in the manner by this Act prescribed with respect to general district rates; moreover they may enter into agreements for supplying water on such terms as may be agreed on between them and the persons receiving the supply, and shall have the same powers for recovering water rents or other payments accruing under such agreements as they have for recovering water rates.

Power to require water rates to be levied.

By the Public Health (Water) Act, 1878 (41 & 42 Vict. c. 25). s. 10, it is provided that—

> Where a sanitary authority under the provisions of the Public Health Act, 1875, as amended by this Act, supply water in any urban district or in any contributory place, and an application is made to them by any ten persons rated to the relief of the poor in such urban district, or by any five persons so rated in such contributory place, to charge water rates or water rents in respect of the water so supplied, it shall be incumbent upon the authority to exercise the powers given to them by the Public Health Act, 1875, and by this Act, of charging water rates or water rents in respect of all water supplied by them in such urban district or in such contributory place.

Stand-pipes.

By s. 9 of the same Act a rural sanitary authority providing a stand-pipe for the supply of water to any portion of their district may recover water rent or water rates from the owner or occupier of any dwelling-house within 200 feet of any such stand-pipe in the same manner in all respects as if the supply had been given on the premises. By s. 11 of the same Act, the Local Government Board may invest any urban authority with all or any of the powers of that Act. See *post*, p. 924.

Expenses of undertaking should be borne by consumers.

In the case of *Worcester Corporation* v. *Droitwich Assessment Committee* (1876), 2 Ex. D. 49, it appeared that a certain reservoir and waterworks had been erected and were maintained under the provisions of the Public Health Act, 1848, for the purpose of supplying the City of Worcester with water. Under s. 93 of that Act (*cf.* now s. 56 of the Public Health Act, 1875), the local authority were required to levy a water

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rate assessed upon the net annual value of premises. The question arose whether the local authority were to be assessed to the poor rate on the footing of their not being entitled to make a profit out of the concern, or whether the same ought to be assessed as if it were in the hands of a tenant untrammelled as to the amount of profit he might make. The Court of Appeal decided in favour of the former view. MELLISH, L.J., in the course of his judgment at p. 60 said, "There are two questions to be considered: first, are the corporation according to the true construction of the Public Health Act, prevented from charging for the use of the water a larger sum than the sum they actually require for the maintenance and repair of the waterworks? And secondly, if they are, can they be rated as occupiers in respect of profits which the law does not allow them to earn? Now with respect to the first question, we think that the corporation in making a water rate under s. 93 of the Public Health Act, 1848, are bound to make an estimate of the sum they actually require for the maintenance of their waterworks, and cannot legally levy a larger sum by a water rate than the sum they so require. The 94th section makes the water rate payable in advance, and enables the supply of any person who neglects to pay it to be cut off, and we think it cannot have been intended that the corporation should charge any person more than his fair share of the sum which is required to maintain the waterworks. There is nothing in the case to prove that the £651 which is stated to be on the average of 8 years the whole net income the corporation have derived from the waterworks, was not the whole sum they required for the maintenance of the waterworks." Notwithstanding this dictum, it is submitted that a local authority may out of the water rates pay all or part of the expense of providing as well as maintaining the waterworks and of repaying instalments of principal and interest of money borrowed for the purpose of providing a water supply. This view is confirmed by the language of s. 229, defining special expenses. The Local Government Board also state that in their opinion the cost of a scheme of water supply may, and should as far as practicable, be thrown upon the consumers of the water by the levy of water rates.

A rural district council supplying water in a contributory place in their district are not bound to charge sufficient water rates or rents to cover the entire expense of providing and maintaining the supply, but such expenses, so far as they cannot be defrayed by a reasonable water rate or water rent charged on the consumers must be raised as special expenses by a rate on the entire contributory place (*Horn* v. *Sleaford R. D. C.*, [1898] 2 Q. B. 358).

Power to charge at different rates.

The Northampton Corporation purchased the undertaking of the Northampton Waterworks Co. under the provisions of a local Act which empowered them to charge for the supply of water for domestic use to any dwelling-house a sum not exceeding 7½ per cent. per annum on the net rateable value of such dwelling house. By the water company's special Act, it was provided that "the company may from time to time supply any person with water for any purpose for which such supply may be required, for such remuneration, and upon such terms and conditions, as shall be agreed upon between the company and the person desirous of having such a supply of water, under a special agreement," and this power was transferred to the corporation. There was no express provision in either of the Acts requiring equality of rating in respect of the supply of water. The corporation charged for the supply of water for domestic purposes at the rate of 7½ per cent. upon the net rateable value of the dwelling-houses in one part of their district, and at the rate of 5 per cent. in another part. The Court held that the corporation were not bound to charge for water at an equal rate in the pound to all consumers (*Northampton Corporation* v. *Ellen* [1904] 1 K. B. 299).

Limitation of charge under local Act.

In *North Eastern Rail. Co.* v. *Normanby L. B.*, Jl. of G. L., April 22nd, 1890, vol. 55, p. 741, the local board claimed to charge 6*d*. per 1,000 gallons for water supplied to the company, and the company claimed to be supplied at 3*d*. per 1,000 gallons. The question turned upon certain sections of the

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Stockton and Middlesbrough Waterworks Act, 1876 (39 & 40 Vict. c. ccxxx.). The Divisional Court decided that the local board were not bound by those sections.

Levying of rate on land outside district.

A New South Wales water board were authorised to levy a water rate "in respect of lands and tenements distant not more than sixty yards from any main . . . , although such lands or premises are not actually connected with any main." It was held that they had no authority to levy a rate on lands outside the prescribed limit merely because such lands formed one holding with other lands within the prescribed limit (*Hunter District Board* v. *Newcastle Coal Co.*, [1896] A. C. 82).

Agreements for supply.

Agreements for supplying water should be in writing and under seal except in urban districts where the amount does not exceed £50, in which case the seal is unnecessary. See *per* Lord BRAMWELL, in *Young* v. *Leamington Corporation*, (1883) 8 App. Cas. 517, 522. As to stamping agreements, see *West Middlesex Waterworks Co.* v. *Suwerkropp* (1829), M. & M. 408; *Gurr* v. *Scudds* (1855), 11 Ex. 190; Stamp Act, 1891, (54 & 55 Vict. c. 39), Sched. I,, exemption of agreement for sale of goods. It would appear from a recent decision (*County of Durham Electrical Power Distribution Co.* v. *Inland Revenue Commissioners*, [1909] 2 K. B. 604) that an agreement containing a clause providing for a minimum payment is liable to an *ad valorem* stamp, as being "a bond, covenant or instrument . . . being the only or principal . . . security . . . for any sum or sums of money at stated periods. . . ."

The Local Government Board have stated that where water is supplied by agreement and paid for by a water rent, there does not appear to be anything to prevent the district council from including in the agreement a stipulation that if the rent is paid before a specified date, a deduction or discount shall be allowed; but that where the water is not supplied by agreement, and payment for it is recovered by means of a water rate assessed on the net annual value of the premises supplied, such an arrangement would not be applicable.

See s. 58, *post*, p. 865, as to agreements to supply water by measure.

Incorporation of certain provisions of Waterworks Clauses Acts.

57. For the purpose of enabling any local authority to supply water there shall be incorporated with this Act the Waterworks Clauses Act, 1863, and the following provisions of the Waterworks Clauses Act, 1847; (namely,)

"With respect" (where the local authority have not the control of the streets) "to the breaking up of streets for the purpose of laying pipes"; and

"With respect to the communication pipes to be laid by the undertakers"; and

"With respect to the communication pipes to be laid by the inhabitants"; and

"With respect to waste or misuse of the water supplied by the undertakers"; and

"With respect to the provision for guarding against fouling the water of the undertakers"; and

"With respect to the payment and recovery of the water rates."

Provided—

That the provisions with respect to the communication pipes to be laid by the undertakers and the inhabitants respectively shall

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apply only in districts or parts of districts where the local authority lay any pipes for the supply of any of the inhabitants thereof; and

That any dispute authorised or directed by any of the said incorporated provisions to be settled by an inspector or two justices shall be settled by a court of summary jurisdiction; and

That section forty-four of the Waterworks Clauses Act, 1847, shall for the purposes of this Act have effect as if the words "with the consent in writing of the owner or reputed owner of any such house, or of the agent of such owner," were omitted therefrom; and any rent for pipes and works paid by an occupier under that section may be deducted by him from any rent from time to time due from him to such owner.

The Waterworks Clauses Act, 1863 (26 & 27 Vict. c. 93), being thus incorporated, regard must be had to the various provisions of that Act relating to the security of reservoirs. See the other provisions of that Act as to supply of water for other than domestic purposes, as to waste and misuse of water, and the recovery of rates, *ante*, pp. 539 *et seq.* As to reservoirs, see further s. 53, *ante*, p. 855.

As to the powers relating to the breaking up of streets, and the meaning of the words "when the local authority have not the control of the streets" in s. 57 see *Hill* v. *Wallasey L. B.*, *ante*, p. 858, and the Waterworks Clauses Act, 1847, ss. 28—34, *ante*, pp. 454 *et seq.* As to communications when to be laid by the local authority themselves, see ss. 44—47, *ante*, pp. 492 *et seq.* As to the like when to be laid by inhabitants, see ss. 48—53, *ante*, pp. 494 *et seq.* As to waste or misuse of water, see ss. 54—60, *ante*, pp. 498 *et seq.* As to guarding against fouling, see ss. 61—67, *ante*, pp. 500 *et seq.* As to the payment and recovery of rates, see ss. 68—74, *ante*, pp. 505 *et seq.*

Amongst the sections of the Waterworks Clauses Act, 1847, above incorporated are those "with respect to the recovery of the water rates." By s. 74 of the Act of 1847, if the water rates due amount to less than £20, then the amount, along with any expenses of cutting off, may be recovered summarily before justices. By s. 11 of the Summary Jurisdiction Act, 1848, complaint must be laid "within 6 calendar months from the time when the matter of such complaint or information respectively arose." By s. 256 of the Public Health Act, 1875, "if any person assessed to any rate made under this Act by any urban authority fails to pay the same when due, and for the space of fourteen days after the same has been lawfully demanded in writing," he may be summoned to appear before a court of summary jurisdiction, who may make an order for payment against him. A local authority supplying water under an agreement made under the powers of the Public Health Act, 1875, served a notice upon a consumer to pay what was due by him within fourteen days. The consumer having failed to pay within fourteen days, the urban authority within six calendar months after the expiration of the fourteen days took out a summons under s. 256 to enforce payment. It was held that the water rent was a "rate made under this Act," within the meaning of s. 256, and that the matter of the complaint arose when the consumer failed to pay the amount claimed within fourteen days from the demand, and, therefore, that the complaint was made within the time limited by s. 11 of the Summary Jurisdiction Act, 1848 (*Elliott* v. *Russell*, [1902] 2 K. B. 748).

It will be observed that the consent of owners is dispensed with for the laying of communication pipes by the local authority; and that any rent for such pipes and works paid by an occupier may be deducted by

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him from his rent. This proviso of the section in the text should be read in connection with s. 62, *post*, p. 867, which authorises the local authority to require houses within their district to take a proper supply of water.

Power to supply water by measure.

58. A local authority may agree with any person to supply water by measure, and as to the payment to be made in the form of rent or otherwise for every meter provided by them; they shall at all times at their own expense keep all meters and other instruments for measuring water let by them for hire to any person in proper order for correctly registering the supply of water, and in default of their so doing such person shall not be liable to pay rent for the same during such time as such default continues. The local authority shall for the purposes aforesaid have access to and be at liberty at all reasonable times to remove test inspect and replace any such meter or other instrument.

This, with the two succeeding sections, gives to local authorities powers which are usually to be found in the special Acts of water companies.

See the Waterworks Clauses Act, 1863, ss. 14, 15, *ante*, p. 540, as to the letting of meters, the property therein in the event of distress or execution, and the right of entry to houses in connection therewith.

See note under s. 56, *ante*, p. 863, as to stamping of agreements for supply of water.

Register of meter to be evidence.

59. Where water is supplied by measure by any local authority, the register of the meter or other instrument for measuring water shall be primâ facie evidence of the quantity of water consumed; and if the local authority and the consumer differ with respect to the quantity consumed, the difference shall be determined, on the application of either party, by a court of summary jurisdiction, and such court may order by which of the parties the costs of the proceedings before them shall be paid, and its decision shall be final and binding.

By the Interpretation Act, 1889 (52 & 53 Vict. c. 63), "court of summary jurisdiction," used in Acts passed before or after that Act, means "any justice or justices of the peace or other magistrate by whatever name called, to whom jurisdiction is given by, or who is authorised to act under, the Summary Jurisdiction Acts, whether in England, Wales, or Ireland, and whether acting under the Summary Jurisdiction Acts, or any of them, or under any other Act, or by virtue of his commission or under the common law." The expression "the Summary Jurisdiction (England) Acts," and the expression "the Summary Jurisdiction (English) Acts," are defined to mean "the Summary Jurisdiction Act, 1848, and the Summary Jurisdiction Act, 1879, and any Act, past or future, amending those Acts or either of them." See *Boulter* v. *Kent JJ.*, [1897] A. C. 556; *Tynemouth Corporation* v. *Attorney-General*, [1899] A. C. 293; and *Fourth City Mutual Building Society* v. *East Ham Churchwardens*, [1892] 1 Q. B. 661.

Although by the section it is provided that the decision of the court of summary jurisdiction shall be final the justices, probably, may, or in the event of their refusal might be required to, state a case (*R.* v. *Bridge* (1890), 24 Q. B. D. 609). *Cf.* with the last-mentioned case *Westminster Corporation* v. *Gordon Hotels Co.*, [1908] A. C. 142.

Penalty for injuring meters.

60. If any person wilfully or by culpable negligence injures or suffers to be injured any meter or fittings belonging to a local authority, or fraudulently alters the index to any meter, or prevents any meter from duly registering the quantity of water supplied, or fraudulently

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abstracts or uses water of the local authority, he shall (without prejudice to any other right or remedy of the local authority), be liable to a penalty not exceeding forty shillings, and the local authority may, in addition thereto, recover the amount of any damage sustained. The existence of artificial means, under the control of the consumer, for causing any such alteration prevention abstraction or use shall be evidence that the consumer has fraudulently effected the same.

There may also be a further criminal remedy—for a larceny of the water; see *Ferens* v. *O'Brien*, cited *ante*, p. 543.

Power to supply water to authority of adjoining district.

61. Any local authority for the time being supplying water within their own district may, with the sanction of the Local Government Board, supply water to the local authority of any adjoining district on such terms as may be agreed on between such authorities, or as, in case of dispute, may be settled by arbitration in manner provided by this Act.

The Act of 1875 contains no corresponding power in relation to gas.

"Adjoining" is the word used in the above section. It is to be distinguished from the word "adjacent," which has a much wider meaning (*Wellington Corporation* v. *Lower Hutt Corporation*, [1904] A. C. 773). See also *In re Bateman* (*Baroness*) *and Parker's Contract*, [1899] 1 Ch. 599.

The Local Government Board will have to take care that the authority can properly spare the water and prevent improvident arrangements in this respect. The application to the Board must be made by the clerk to the council, who should forward a copy of the resolution directing it and a copy of the draft agreement between the two authorities. This agreement, when sanction has been obtained, should be under seal. The section only requires the sanction of the Local Government Board to the fact of the supply, and not to the terms of the agreement (although these are considered) and it empowers the Board to give a limited sanction, *i.e.*, for a supply to part of an authority's district, in which case a fresh sanction must be obtained if it be desired to supply a larger part of the district (*Soothill Upper U. D. C.* v. *Wakefield R. D. C.*, [1905] 2 Ch. 516). It was in the last-mentioned case also decided that an agreement to supply water in specified quantities to a district does not imply necessarily an agreement to supply water at such a pressure as will give a continuous supply at all parts of the district.

It will be observed that the water must be supplied to the authority of the "adjoining" district, not to the consumers in that district direct.

In the case of *Halifax Corporation* v. *Morley Corporation* (1894), 10 T. L. R. 454, by the defendants' special Act, it was enacted that the defendant corporation should not either directly or indirectly supply any water, nor enter into any contract whereby water might be either directly or indirectly supplied or used within the water supply limits of the plaintiff corporation, nor within any place within which water was at the time of the passing of the special Act either directly or indirectly supplied by the plaintiff corporation. The defendant corporation supplied water to the works of a railway company within the district of a rural sanitary authority who supplied within their own district water supplied to them by a local board, and that local board received its supply from the plaintiff corporation and was so receiving it at the time of the passing of the defendants' special Act. It was held that the action of the defendant corporation in supplying the railway company was contrary to their special Act. See also *Seton* v. *Linlithgow Burgh Commissioners* (1900), 37 Sc. L. R. 715.

Reference might be made here to a recent case in which was discussed the right of a railway company to supply water from its own land to the premises of a dock company which had been amalgamated with the railway company. The amalgamating Act provided that none of the provisions of the Acts which would have related respectively to the dock company and the railway company exclusively, if the amalgamation had not taken place, were to apply to any portion of the undertaking of the other company. Before the amalgamation the dock company had obtained its water supply from the waterworks of a neighbouring corporation. The railway company had a supply of water from land which it had obtained for railway purposes before the amalgamation. After the amalgamation it ceased to use the corporation's water and supplied the dock with water from its own land. The corporation sought to restrain the railway company from so doing. It was held, that since the amalgamation it was not *ultra vires* the railway company to use its water for the supply of the dock (*Attorney-General* v. *North Eastern Rail. Co.*, [1906] 2 Ch. 675).

See *Halifax Corporation* v. *Soothill Upper L. B.* (1874), 31 L. T. (N.S.) 6, cited *ante*, p. 476.

A rural district council in 1895 incurred a debt to an urban district council in respect of the water supply for a contributory place within their district. They refused to pay the debt, setting up a counterclaim against the urban district council for damages for breach of agreement to a greater amount. In respect of these conflicting claims a prolonged correspondence and negotiation took place between the two councils; but, ultimately, the urban district council brought an action for their debt in March, 1897, and on May 15th, 1897, the amount actually payable to them was ascertained by judgment being recovered by them for a balance of their debt above the sum recovered by the defendants on their counterclaim. On October 25th in the same year, the urban district council applied for a mandamus commanding the defendants to issue their precept to the overseers of the contributory place for payment of the amount recovered:—*Held*, that the delay in the commencement of the action being under the circumstances excusable, the mandamus ought to issue, and that the rate which would thereupon have to be made would not be illegal as being retrospective. (*R.* v. *Leigh R. D. C.*, [1898] 1 Q. B. 836). See also hereon *Croydon Corporation* v. *Croydon R. D. C.*, [1908] 2 Ch. 321. *Cf.* s. 210 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), as to urban districts.

Income tax on profit from supply.

Where the terms arranged yield to the supplying authority a surplus over the cost to them of giving the supply, such surplus is assessable in their hands to income tax, including a part applied to a sinking fund (*Harris* v. *Irvine Corporation* (1900), 65 J. P. 663). See also other cases as to income tax collected at p. 203, *ante*.

Local authority may require houses to be supplied with water in certain cases.

62. Where on the report of the surveyor of a local authority it appears to such authority that any house within their district is without a proper supply of water, and that such a supply of water can be furnished thereto at a cost not exceeding the water rate authorised by any local Act in force within the district, or where there is not any local Act so in force at a cost not exceeding twopence a week, or at such other cost as the Local Government Board may, on the application of the local authority, determine under all the circumstances of the case to be reasonable, the local authority shall give notice in writing to the owner, requiring him, within a time therein specified, to obtain such supply, and to do all such works as may be necessary for that purpose.

If such notice is not complied with within the time specified, the local authority may, if they think fit, do such works and obtain such supply, and for that purpose may enter into any contract with any water company supplying water within their district; and water rates may be made and levied on the premises by the authority or company which

Sect. 62. furnishes the supply and may be recovered as if the owner or occupier of the premises had demanded a supply of water and were willing to pay water rates for the same; and any expenses incurred by the local authority in doing any such works may be recovered in a summary manner from the owner of the premises, or may by order of the local authority be declared to be private improvement expenses.

This section takes the place of s. 76 of the Public Health Act, 1848 (11 & 12 Vict. c. 63); s. 51 of the Local Government Act, 1858 (21 & 22 Vict. c. 98); and s. 50 of the Sanitary Act, 1866 (29 & 30 Vict. c. 90). Its object is thus explained by the Local Government Board: "Complaints have often been made that in attempting to enforce a compulsory supply of water to houses in districts where no local Act is in force, the limited charge, viz., 2*d.* a week, is insufficient to enable a proper supply to be furnished. The Local Government Board are now empowered, by s. 62, on the application of any local authority, to extend the limit of charge to such amount as the Board may, under all the circumstances of the case, deem reasonable. The same section, by expressly enabling the local authority to enter into contracts with a water company, removes certain difficulties which had arisen under the Sanitary Acts, where the authority enforced a supply of water in a district within the limits of a water company" (Letter to local authorities, dated September 30th, 1875).

It is only where there is not a local Act in force authorising a water rate, and where the cost of furnishing a proper supply of water to a house will exceed 2*d.* a week, that the Local Government Board are empowered to determine the reasonable cost at which a supply of water may be furnished compulsorily to houses which are without a proper supply. In cases where water is taken voluntarily, the local authority are empowered to charge water rates or water rents under s. 56, *ante*, p. 861, and no approval of the Local Government Board is required to charges under that section.

The Public Health (Water) Act, 1878 (41 & 42 Vict. c. 25), provides that:

Meaning of "reasonable cost."

> 8. Where application is made to the Local Government Board by a local authority under section sixty-two of the Public Health Act, 1875, to determine what is a reasonable cost within the meaning of that section, the Board may, for that purpose, fix, by order, a general scale of charges for the whole or any part of the district of the local authority, and the cost of the supply of water to any house within the area specified in the order shall be deemed to be determined to be a reasonable cost within the meaning of that section if it does not exceed the cost authorised by such general scale of charges.

Specimen scales of charges taken from Orders of the Local Government Board will be found in the Encyclopædia of Local Government Board Requirements and Practice, by Wood and Johnson, at pp. 862—3. In one case where application was made for a scale of charges, the Board, on examining the scale, found that its adoption would involve a considerable annual deficit, which would have to be borne by the general district rate, and they expressed the view that, as far as practicable, the costs of a water undertaking should be borne by the consumers of the water, and they required amendments to be made in the suggested scale (see Casson's Decisions of the Local Government Board, p. 192). See also a somewhat similar decision in the case of an application from the Knaresborough Rural District reported in the Journal of Gas Lighting, April 26th, 1904, p. 246.

A local authority caused a supply of water to be brought in main water-pipes along the streets in which a house was situate, and gave notice to the owner of the house under s. 62 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), to obtain a proper supply, and do all such works as might be necessary for that purpose. That notice was not complied with, and the local authority did not exercise the power given to them by that section of executing the works necessary to connect the house with the main. In an action by the water company for water rates:—*Held*, that the defendant was liable, and that it was not a condition precedent to such liability that the works necessary to bring the water into the house should have been executed (*Southend Waterworks Co.* v. *Howard* (1884), 13 Q. B. D. 215).

In proceedings to recover expenses under the section in the text, it is not necessary to prove any special resolution of the local authority as a condition precedent (*Caballero* v. *Lewis* (1874), 38 J. P. 614).

Sect. 3 of the Public Health (Water) Act, 1878 (41 & 42 Vict. c. 25), provides that "It shall be the duty of every rural sanitary authority, regard being had to the provisions in this Act contained, to see that every occupied dwelling-house within their district has within a reasonable distance an available supply of wholesome water sufficient for the consumption and use for domestic purposes of the inmates of the house." This section is in its operation independent of the section in the text. The distinction was explained in the case of *Colne Valley Water Co.* v. *Treharne* (1884), 50 L. T. 617. The facts in that case were as follows: The respondent was the owner of ten cottages within the district of the Watford Rural Sanitary Authority, and was by them served with a notice under s. 62 of the Public Health Act to provide a proper supply of water to the cottages. The respondent took no steps to provide a supply of water pursuant to the notice. The local authority therefore directed the necessary steps to be taken for laying on water to the cottages from the mains of the appellant company, which were laid in the public road adjoining the premises. The occupiers of the cottages used the water so supplied, but the respondent never acknowledged the right of the sanitary authority to lay on the water, but addressed a memorial to the local authority under s. 4 of the Public Health (Water) Act, 1878. The appellants, the water company, sued the respondent for water rates. The respondent contended that, inasmuch as the local authority did not, in pursuance of s. 4 of the Public Health (Water) Act, 1878, upon the receipt of the memorial obtain the authorisation of a court of summary jurisdiction, or of the Local Government Board, for the laying on of the water, and inasmuch as no notices, as required by s. 3 of the said Act, had been served upon him, he was not compellable to pay the water rate sought to be recovered by the appellants. The Court of Queen's Bench held that the Public Health (Water) Act, 1878, did not apply to this case, but that the proceedings of the local authority were taken, and rightly taken, under s. 62 of the Public Health Act, 1875, and that the respondent was liable for the water rate.

The cost referred to in the section in the text is the cost of the supply of water, and is quite distinct from the expense of bringing the supply to the premises. It is further to be observed that this section appears only to apply where there is a water supply which can be obtained from the mains of a water company or of the local authority. This construction of the section results from the use of the words *furnished thereto*, which would be inapplicable to the case of a well, etc., provided at a distance from the house; and at the latter end of the section it is provided that water rates may be made or levied on the premises by the authority or company which supplies the water. See the evidence of the Secretary of the Local Government Board given before a select committee of the House of Commons in 1878, at pp. 11, 12, of the report. And see *per* STEPHEN, J., in *Southend Waterworks Co.* v. *Howard*, *supra*.

The limitation as to the cost of providing a water supply to a house contained in s. 3 of the Public Health (Water) Act, 1878, does not apply to the section in the text. Where under that section an owner is required by the local authority to obtain a water supply from an unreasonable distance, the remedy of the owner is by way of appeal to the Local Government Board, under s. 268 of the Public Health Act, 1875 (*West Lancashire R. D. C.* v. *Ogilvy*, [1899] 1 Q. B. 377).

Sect. 11 of the above-mentioned Act of 1878 authorises the Local Government Board to invest any urban authority with all or any of the powers and duties given by that Act to rural authorities.

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As to the "expenses incurred by the local authority in doing any such works," referred to in the section in the text, the local authority may either recover the same in a summary manner from the owner, or they may declare the same private improvement expenses. In the latter case they may levy on the occupier a private improvement rate, sufficient to discharge such expenses, together with interest in such period not exceeding thirty years, as they may determine (s. 213); but the occupier so paying may, where he holds the premises at a rent not less than the rack-rent, deduct three-fourths of the amount paid by him from the rent; and where his rent is less than the rack-rent, he may deduct such proportion of three-fourths of the rate as his rent bears to the rack-rent. If the occupier's landlord is himself liable to pay rent, and holds for a term, of which less than twenty years is unexpired, he may deduct such proportion of the sum deducted from the rent payable to him as the rent payable by him bears to the rent payable to him (s. 214). Sect. 215 provides for the redemption of private improvement rates by payment of the expenses in respect of which the rate was made, or such part thereof as may not have been defrayed by sums already levied in respect of the same.

It is a question of fact whether particular premises are a "house" within the meaning of this section (see *Wootten* v. *Bishop* (1907), 71 J. P. 334). The notice must proceed from the local authority, not from the surveyor or other officer. See *St. Leonard's, Shoreditch* (*Vestry of*) v. *Holmes* (1885), 50 J. P. 132. *Cf. London C. C.* v. *Hobbis* (1896) 61 J. P. 85.

By s. 157 of the Public Health Act, 1875, every urban authority may make byelaws with respect to the drainage of buildings, and to water-closets, earth-closets, privies, ashpits, and cesspools in connection with buildings. All such byelaws are subject to confirmation by the Local Government Board (s. 184). By the Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59) (adoptive), s. 23, in districts where that Act is adopted, these powers are extended so as (1) to enable urban authorities to make byelaws with respect to keeping water-closets supplied with sufficient water for flushing; (2) to make all the byelaws under s. 157 affect buildings erected before the times mentioned in that section: and (3) to enable rural authorities to make byelaws in respect of the said matters. Such byelaws can be made to affect old buildings (*Simmons* v. *Malling R. D. C.*, [1897] 2 Q. B. 433). See a collection of cases as to the requisites of valid byelaws and the construction of byelaws in the last (7th) edition of Lumley's Public Health, at pp. 437—446.

As to the metropolis, see s. 48 of the Public Health (London) Act, 1891 (set out *ante*, p. 567), which provides that a house without a proper water supply shall be a nuisance punishable summarily under that Act, and if it is a dwelling-house, shall be deemed unfit for human habitation. See also *Field & Sons* v. *Southwark Borough Council*, cited *ante*, at p. 568. The London County Council have power to make byelaws with respect to water-closets, and to inspect, etc. (ss. 39 *et seq.*). See *Fulham Vestry* v. *Solomon*, [1896] 1 Q. B. 198; *Southwold Corporation* v. *Crowdy* (1903), 67 J. P. 278; and see further the notes to s. 33 of the Metropolis Water Act, 1871, *ante*, p. 567).

Powers of water company for supplying water to local authority.

63. Any water company may contract to supply water or may lease their waterworks to any local authority; and the directors of any water company, in pursuance, in the case of a company registered under the Companies Act, 1862, of a special resolution of the members passed in manner provided by that Act, and in the case of any other company of a resolution passed by three-fourths in number and value of the members present, either personally or by proxy, at a meeting specially convened with notice of the business to be transacted, may sell and transfer to any local authority, on such terms as may be agreed on between the company and the local authority, all the rights powers and privileges, and all or any of the waterworks premises and other property of the company, but subject to all liabilities to which the same are subject at the time of such purchase.

As to special resolutions under the Companies (Consolidation) Act, 1908 (8 Edw, 7, c. 69), see s. 69 of that Act.

As to terms, see *Stockton and Middlesborough W. B.* v. *Kirkleatham L. B.*, [1893] A. C. 444; and see the observations on that case in *London C. C.* v. *London Street Tramways Co.*, [1894] 2 Q. B. 189, affirmed in the House of Lords, *sub nom. London Street Tramways Co.* v. *London C. C.*, [1894] A. C. 489. See also *Wolstanton United D. C.* v. *Burslem Corporation* (1907), 72 J. P. 28.

Vesting of public cisterns, etc., in local authority.

64. All existing public cisterns pumps wells reservoirs conduits aqueducts and works used for the gratuitous supply of water to the inhabitants of the district of any local authority shall vest in and be under the control of such authority, and such authority may cause the same to be maintained and plentifully supplied with pure and wholesome water, or may substitute maintain and plentifully supply with pure and wholesome water other such works equally convenient; they may also (subject to the provisions of this Act) construct any other such works for supplying water for the gratuitous use of any inhabitants who choose to carry the same away, not for sale, but for their own private use.

As to the meaning of the words "vest in and be under the control of," see *Wandsworth B. of W.* v. *United Telephone Co.* (1884), 13 Q. B. D. 904, and many other cases collected therewith in the last (7th) edition of Lumley's Public Health, at pp. 277—9.

The effect of this vesting is to enable the local authority to bring an action in their own name, and not in the name only of the Attorney-General, for damages for any interference with the well, although such interference is not proved to be injurious to the public rights. But an action for damages for interfering with public access, or for an injunction to restrain interference with access, must be brought in the name of the Attorney-General (*Holmfirth L. B.* v. *Shore*, *infra*). A parish council has no power to bring an action on behalf of the inhabitants of the parish for the purpose of restraining interference with their access to a pump properly erected by the council under the powers given by s. 8 (1) of the Local Government Act, 1894 (*Stoke Parish Council* v. *Price*, [1899] 2 Ch. 277).

A trough or cistern receiving the overflow from a spring at some distance had been used by the public gratuitously for watering cattle and for the supply of water for domestic purposes for a period of over fifty years. The defendant erected a gate to prevent the access of cattle to the trough, and let a pipe into the bottom of the trough leading into his own house, where it terminated in a stop-cock; and by means of this pipe and stop-cock he could draw off as much water as he pleased:—*Held*, that the trough or cistern was a public well or work used for the gratuitous supply of water to the inhabitants of the district of the local authority in which it was situate, and that it was vested in and was under the control of the local authority by force of s. 64, and that the local authority might maintain an action in their own name in the county court against the defendant for damages for the interference with the trough by the insertion of the pipe in the bottom of it (*Holmfirth L. B.* v. *Shore* (1895), 59 J. P. 344). See also *Att.-Gen.* v. *Tonkin* (1901), 18 T. L. R. 29.

In *Leadgate L. B.* v. *Bland* (1881), 45 J. P. 526, which was a case tried at Durham Assizes, Kay, J., held that a natural pond was a reservoir within the section, having been used by the public for a number of years for the purpose of watering horses.

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See also *Smith* v. *Archibald* (1880), 5 App. Cas. 489, decided under a corresponding section of the Public Health (Scotland) Act, 1867 (30 & 31 Vict. c. 101); *Smith* v. *Denny Commissioners* (1880), 7 Ct. of Sess. Cas. (4th series) 28, and *Dungarvan Guardians* v. *Mansfield*, [1897] 1 Ir. R. 420, decided under the Public Health (Ireland) Act, 1878 (41 & 42 Vict. c. 52).

Where an abandoned shaft of a disused mine within the meaning of the Metalliferous Mines Regulation Act, 1872, has become a public well, and as such has become vested in a local authority under the section in the text, the authority are not the "owners" of the shaft within the meaning of s. 41 of the first-named Act, so as to render them liable under s. 13 to fence it (*Knuckey* v. *Redruth R. D. C.*, [1904] 1 K. B. 382).

The plaintiff was the owner of land through which ran a lane, which was a public thoroughfare. On the land of the plaintiff adjoining the lane, but not separated from it, there were five public wells. These wells became vested in the rural sanitary authority under s. 64. The plaintiff's land on either side of the lane was on a slope, and on the southern side, where the land was below the level of the wells, the plaintiff had been drifting for water. The wells suddenly failed; and the surveyor of highways, believing the failure to be due to the operations of the plaintiff, obtained the authority of the rural sanitary authority, and ordered certain persons employed by him for the purpose to dig holes in the roadway of the lane either to recover the water or to discover the cause of its having ceased to flow. The plaintiff commenced proceedings for an injunction. It was held that s. 64 "did not authorise the local authority to enter another man's land and help themselves to water." There was no suggestion that the plaintiff had done anything more than he was clearly entitled to (*Edwards* v. *Jolliffe*, [1877] W. N. 120).

A local board of health Act empowered the board to supply the town with water at certain rates for domestic purposes, and for other than domestic purposes for such remuneration and upon such terms and conditions as should be agreed upon between them and the persons desirous of having such supply. An inhabitant of the town having presented to the town an ornamental fountain with a trough or basin, which was set up in one of the public streets, the board supplied it with water on market days for the use of cattle in the market, and for horses, if yoked, when passing to and fro. The respondent, who kept horses, with a view to evade payment of the rate for the supply of water to his stable, took his horses to the fountain to drink. Upon an information laid against him under the Waterworks Clauses Act, 1847, s. 59, *ante*, p. 499, the magistrates, being of opinion that the board had no right to erect a fountain on the public highway otherwise than for the gratuitous use of the public under the corresponding section of the Public Health Act, 1848, declined to convict. On appeal it was held that they were wrong, for notwithstanding the fountain might be a public nuisance, yet the water was the private property of the board, and the respondent had no right to take it against their will (*Hildreth* v. *Adamson* (1860), 25 J. P. 645). The effect of this case is that the board may, if they think fit, limit the purposes for which the gratuitous supply is provided. The court refrained from expressing any opinion on the point whether a fountain for gratuitous supply might by virtue of this section be erected on a public highway. And it may be observed that while 53 & 54 Vict. c. 59, s. 42, enables an urban authority to authorise the erection of a statue or monument in a street, it does not mention a fountain.

The corporation of H., in exercise of their powers as a local authority, erected a drinking trough in a main street, in front of the premises of the plaintiffs:—*Held*, that although some annoyance was caused to the plaintiffs by the placing of the trough in front of their premises, there was not sufficient evidence of the existence of a legal nuisance to justify the interference of the court (*Baker* v. *Hertford Corporation*, Ch. D., Buckley, J., May 17th, 1900).

A local authority, in whom a public well is vested by the section in the text, has no power to grant a licence to abstract water from the well for the

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purpose of bottling and selling, so as to sensibly diminish the supply of water to riparian properties along a stream which is fed by the well (*Mostyn* v. *Atherton*, [1899] 2 Ch. 360).

Water for public baths or trading or manufacturing purposes.

65. Any local authority may, if they think fit, supply water from any waterworks purchased or constructed by them to any public baths or washhouses, or for trading or manufacturing purposes, on such terms and conditions as may be agreed on between the local authority and the persons desirous of being so supplied; moreover, any local authority may, if they think fit, construct any works for the gratuitous supply of any public baths or washhouses established otherwise than for private profit or supported out of any poor or borough rates.

See Waterworks Clauses Act, 1863, s. 13, *ante*, p. 539.

Duty of urban authority to provide fire-plugs.

66. Every urban authority shall cause fire-plugs and all necessary works machinery and assistance for securing an efficient supply of water in case of fire to be provided and maintained, and for this purpose they may enter into any agreement with any water company or person; and they shall paint or mark on the buildings and walls within the streets words or marks near to such fire-plugs to denote the situation thereof, and do such other things for the purposes aforesaid as they may deem expedient.

It will be observed that only urban authorities are placed under this obligation, and as there is no other distinct enabling section, rural district councils are given no express powers under the Act for the provision of fire-plugs, hydrants and other appliances for furnishing water for fire brigade purposes. Where, however, a rural district council provide a public water supply for a parish in their district they may be presumed to have power to fix fire hydrants in the mains as part of the works of water supply which they may carry out under s. 51. In other cases, if power to provide hydrants is required by a rural district council they should apply to the Local Government Board for an order under s. 276. In view of the imperative character of s. 66, it is the board's practice to restrict such orders to the particular parish or parishes in which the appliances are shown to be required, and in which the council are prepared to take action at once.

An urban authority is under no obligation to maintain and repair fire-plugs in their district, unless such fire-plugs were fixed by them or by a water company at their request (*Grand Junction Waterworks Co.* v. *Brentford L. B.*, [1894] 2 Q. B. 735).

See, further, Waterworks Clauses Act, 1847, s. 38, and the cases there referred to, *ante*, pp. 479 *et seq.*, and in particular see *Dawson* v. *Bingley U. D. C.*, a case which arose under s. 66, *supra*, and which is cited at length at p. 481, *ante*. As to the metropolis, see the Metropolis Water Act, 1871, s. 34, *ante*, p. 568.

Agreements with universities.

67. In the Oxford or Cambridge district the local authority may supply water to any hall college or premises of the university within such district, on such terms with respect to the mode of paying for such supply as may from time to time be agreed on between such university, or any hall or college thereof, and the local authority.

PROVISIONS FOR PROTECTION OF WATER.

68. Any person engaged in the manufacture of gas who—

Penalty for causing water

(1.) Causes or suffers to be brought or to flow into any stream reservoir aqueduct pond or place for water, or into any

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to be corrupted by gas washings.

drain or pipe communicating therewith, any washing or other substance produced in making or supplying gas; or

(2.) Wilfully does any act connected with the making or supplying of gas whereby the water in any such stream reservoir aqueduct pond or place for water is fouled,

shall forfeit for every such offence the sum of two hundred pounds, and, after the expiration of twenty-four hours notice from the local authority or the person to whom the water belongs in that behalf, a further sum of twenty pounds for every day during which the offence is continued or during the continuance of the act whereby the water is fouled.

Every such penalty may be recovered, with full costs of suit, in any of the superior courts, in the case of water belonging to or under the control of the local authority by the local authority, and in any other case by the person into whose water such washing or other substance is conveyed or flows or whose water is fouled by any such act as aforesaid, or in default of proceedings by such person, after notice to him from the local authority of their intention to proceed for such penalty, by the local authority; but such penalty shall not be recoverable unless it be sued for during the continuance of the offence, or within six months after it has ceased.

See Gasworks Clauses Act, 1847, s. 21, and notes, *ante*, pp. 191 *et seq.*, and Waterworks Clauses Act, 1847, s. 62, *ante*, p. 504.

As to the metropolis, see Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), ss. 52 *et seq.*

Local authority may take proceedings to prevent pollution of streams.

69. Any local authority, with the sanction of the Attorney-General, may, either in their own name or in the name of any other person, with the consent of such person, take such proceedings by indictment bill in chancery action or otherwise as they may deem advisable for the purpose of protecting any watercourse within their jurisdiction from pollutions arising from sewage either within or without their district; and the costs of and incidental to any such proceedings, including any costs that may be awarded to the defendant, shall be deemed to be expenses properly incurred by such authority in the execution of this Act.

To constitute a watercourse there must be water flowing in a channel between banks more or less defined (*per* TENTERDEN, L.C.J., in *R.* v. *Inhabitants of Oxfordshire* (1830), 1 B. & Ad. at p. 301. It may be natural or artificial; see *Bowes* v. *Watson* (1879), 44 J. P. 364; *Smith* v. *Barnham* (1876), 1 Ex. D. 419; *Biscoe* v. *Drought* (1859), 11 Ir. C. L. R. 250; *Sutcliffe* v. *Booth* (1863), 27 J. P. 613; *Remfry* v. *Surveyor-General of Natal*, [1896] A. C. 558.

See the Rivers Pollution Prevention Act, 1876 (39 & 40 Vict. c. 75), s. 8, *ante*, p. 743; and the special powers with regard to the Mersey and Irwell and the rivers of the West Riding of Yorkshire, at pp. 764, 771.

See the cases collected at pp. 423—8, *ante*, as to the fouling of streams and the prevention thereof.

Sect. 91 of the Act of 1875, in defining nuisances, includes "any pool, ditch gutter watercourse privy urinal cesspool drain or ashpit so foul or in such a state as to be a nuisance or injurious to health"; and ss. 92—110 contain various powers for the abatement of such nuisances in a summary

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manner, and the imposition of penalties. Sect. 48 also deals with the case of watercourses or open ditches lying near to or forming the boundary between the district of any local authority and any adjoining district being foul and offensive, and authorises an application to the justices for an order for cleansing the same.

It will be observed that the section in the text refers to "pollutions arising from sewage either within or without their district." Sect. 17 of the Act provides that "Nothing in this Act shall authorise any local authority to make or use any sewer drain or outfall for the purpose of conveying sewage or filthy water into any natural stream or watercourse, or into any canal or pond or lake until such sewage or filthy water is freed from all excrementitious or other foul or noxious matter such as would affect or deteriorate the purity and quality of the water in such stream or watercourse or in such canal pond or lake." See *Attorney-General* v. *Birmingham, etc., Drainage Board.* cited *ante*, at p. 425. As to schemes for purification or disposal of sewage, see *ante*, p. 734.

See the cases of *Glossop* v. *Heston and Isleworth L. B.*, and *Attorney-General* v. *Dorking Union*, and the Rivers Pollution Prevention Act, 1893, *ante*, p. 754. By s. 1 of the Act of 1893 (56 & 57 Vict. c. 31), it is provided that "where any sewage matter falls or flows or is carried into any stream after passing through or along a channel which is vested in a sanitary authority, the sanitary authority shall, for the purposes of section three of the Rivers Pollution Prevention Act, 1876, be deemed to knowingly permit the sewage matter so to fall, flow, or be carried."

Sect. 47 of the Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59) (adoptive) enacts:

> (1.) It shall not be lawful for any person to throw or place or suffer to be thrown or placed into or in any river, stream, or watercourse within any district in which this part of this Act is adopted, any cinders, ashes, bricks, stone, rubbish, dust, filth, or other matter which is likely to cause annoyance.
>
> (2.) Every person offending against this enactment shall be liable to a penalty not exceeding forty shillings for every such offence.

This section is one of those which a rural authority may also adopt (s. 50).

Cf. s. 107 of the Act of 1875, which authorises the local authority, if in their opinion summary proceedings would not afford an adequate remedy, to cause proceedings to be taken in the superior courts to enforce the abatement or prohibition of any nuisance under that Act, etc. Under this section it has been held that such proceedings must be ordinary proceedings known to the law, and that in the absence of special damage, a local authority cannot sue in respect of a public nuisance except with the sanction of the Attorney-General by action in the nature of an information (*Wallasey L. B.* v. *Gracey* (1887), 36 Ch. D. 593). The decision in this case was approved of by the Court of Appeal in *Tottenham U. D. C.* v. *Williamson*, [1896] 2 Q. B. 353. See further *Stoke Parish Council* v. *Price*, [1899] 2 Ch. 277.

Power to close polluted wells, etc.

70. On the representation of any person to any local authority that within their district the water in any well tank or cistern, public or private, or supplied from any public pump, and used or likely to be used by man for drinking or domestic purposes, or for manufacturing drinks for the use of man, is so polluted as to be injurious to health, such authority may apply to a court of summary jurisdiction for an order to remedy the same; and thereupon such court shall summon the owner or occupier of the premises to which the well tank or cistern belongs, if it be private, and in the case of a public well tank cistern or pump, any person alleged in the application to be interested in the same, and may either dismiss the application, or may make an order directing the well tank cistern or pump to be permanently or temporarily closed, or the water to be used for certain purposes only, or such other order as may appear to them to be requisite to prevent injury to the health of persons drinking the water.

The court may, if they see fit, cause the water complained of to be analysed at the cost of the local authority applying to them under this section.

If the person on whom an order under this section is made fails to comply with the same, the court may on the application of the local authority authorise them to do whatever may be necessary in the execution of the order, and any expenses incurred by them may be recovered in a summary manner from the person on whom the order is made.

Expenses incurred by any rural authority in the execution of this section, and not recovered by them as aforesaid, shall be special expenses.

The changes introduced by this section are thus stated by the Local Government Board: "The power of local authorities, under the 50th section of the Sanitary Law Amendment Act, 1874, to institute proceedings for the closing of polluted wells, cisterns, and tanks, has been extended by s. 70, so as to include the case where the water is used for the manufacture of aërated or other drinks for human consumption. The section further enables proceedings to be taken against the owner as well as the occupier, and empowers the authority, if an order of justices under the section is not complied with, themselves to carry into execution and to recover the expenses in a summary manner from the person on whom the order is made" (Letter to local authorities, September 30th, 1875).

As to the metropolis, see Public Health (London) Act, 1891 (54 & 55 Vict. c. 70), ss. 54 *et seq.;* and see further the provisions of the Local Government Act, 1894 (56 & 57 Vict. c. 73), *post*, p. 926.

See ss. 251 *et seq.*, of the Public Health Act, 1875, as to legal proceedings by local authorities.

PURCHASE OF LANDS.

Power to purchase lands.

175. Any local authority may for the purposes and subject to the provisions of this Act purchase or take on lease sell or exchange any lands, whether situated within or without their district; they may also buy up any water-mill dam or weir which interferes with the proper drainage of or the supply of water to their district.

Any lands acquired by a local authority in pursuance of any powers in this Act contained and not required for the purpose for which they were acquired shall (unless the Local Government Board otherwise direct) be sold at the best price that can be gotten for the same, and the proceeds of such sale shall be applied towards discharge, by means of a sinking fund or otherwise, of any principal moneys which have been borrowed by such authority on the security of the fund or rate applicable by them for the general purposes of this Act, or if no such principal moneys are outstanding shall be carried to the account of such fund or rate.

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Urban district councils who are municipal corporations also possess powers to purchase or otherwise acquire hereditaments for public purposes under s. 107 of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50).

"Lands" include easements. See s. 4.

Sect. 176 provides that s. 127 of the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), shall not be incorporated with this Act. That section provides that within ten years after the expiration of the time limited for the completion of works the promoters shall absolutely sell and dispose of all superfluous lands, and in default thereof all such superfluous lands remaining unsold shall vest in and become the property of the owners of the lands adjoining. Sect. 177 gives power to local authorities to let for any term any lands which they may possess as and when they can conveniently spare the same. By s. 178 special provisions are made with reference to lands belonging to the duchy of Lancaster. See notes, *post*, pp. 883 *et seq.*

[The remainder of this note is substantially a reproduction of the note under s. 178 of the Public Health Act, 1875, in the last (7th) edition of Lumley's Public Health, vol. 1, by Mr. A. Macmorran, K.C., and the present editor of this work.]

Sect. 7 of the Public Health Act, 1875, empowers urban district councils to hold lands for the purposes of this Act in their corporate name without any licence in mortmain. This power was extended by the Mortmain and Charitable Uses Act Amendment Act, 1892, s. 1, to "any purpose or purposes for which such authority is empowered by any Act of Parliament to acquire land." The like power in the case of rural district councils is derived from s. 24 (7) of the Local Government Act, 1894, which enables such councils to hold land for the purposes of their powers and duties without licence in mortmain.

"Purchase" includes gift.

The word "purchase" must be taken to include gift. An urban district council do not therefore require to be invested with the powers of a parish council under s. 8 (1) (h) of the Local Government Act, 1894, in order to accept a gift of land for purposes of the Act of 1875.

Conveyance necessary.

The Local Government Board hold that a formal conveyance of land to a district council is always desirable, even when land is given.

All interests should be acquired.

The Board also hold that when it is intended to borrow money for the acquisition of the fee simple of lands, any leasehold interests should be acquired at the same time if this is possible.

Purchase of equity.

In the case of a local authority proposing to purchase an equity of redemption, the Local Government Board apparently have no objection, provided the authority undertake to pay off the mortgage which they take over.

Immature schemes.

It sometimes happens that a district council find it desirable to acquire lands (*e.g.*, when property is suddenly placed upon the market), although they are not prepared with any precise scheme of utilisation. In such a case, if a loan is required, the Local Government Board usually allow only a short term for repayment, but if during this period the council resolve upon some scheme for using the land the Board are willing to entertain an application for sanction to a reborrowing for an extended period. In taking a conveyance of land under such circumstances it is very desirable that a district council should have regard to the decision in *Attorney-General* v. *Hanwell*, *post*, p. 880.

Purchase to avoid claims for compensation.

If the acquisition of lands becomes desirable, not because such lands are actually required for purposes of the Act, but because of probable claims for compensation (*e.g.*, when a private residence adjoins a refuse tip or sewage farm), the Local Government Board are apparently disposed to consider that the purchase can legally be made, and to entertain an application for sanction to a loan if this is necessary.

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A purchase of lands in order to protect from pollution the gathering grounds of waterworks has also been held to be "for the purposes of this Act."

Lands required for protection of gathering grounds.

Lease with option to purchase.

The owner of land demised it to a local authority for the term of thirty years at a rent, the land to be used solely as a public park, and the lease contained a covenant in the form of a declaration that if the local authority should be desirous at any time during the term of purchasing the fee simple they could do so upon giving six months' notice and paying a certain sum. About one year before the lease expired the local authority gave notice to purchase the fee. The executors and devisees under the will of the owner, who had died, refused to convey upon the ground that the covenant purported to create an interest in land which was void for remoteness. The local authority brought an action for specific performance or for damages for breach of covenant. It was held that though the purpose for which the land was to be assigned was charitable, as the interest of the charity did not become effective until the happening of a future event which might happen at a period of time more distant than a life or lives in being and twenty-one years afterwards, the limitation was void for remoteness, and specific performance would not be granted; but that the contract to convey the land was not void either at common law or in equity, and that, therefore, the local authority were entitled to damages for breach of it (*Worthing Corporation* v. *Heather*, [1906] 2 Ch. 532).

Unauthorised purchases.

If a local authority are proposing to lay out their funds in an unauthorised purchase, they may be restrained from so doing in proceedings instituted by the Attorney-General upon the relation of a ratepayer. See *Attorney-General* v. *Cardiff Corporation*, [1894] 2 Ch. 337; *Attorney-General* v. *Merthyr Tydfil Union*, [1900] 1 Ch. 516.

Although, however, a proposed purchase may be restrained on the ground that it is *ultra vires*, yet, if a conveyance be duly executed, it would seem that the transfer, as a matter of title and ownership, is complete, and that the property is effectually vested in the local authority (*Ayers* v. *South Australian Banking Co.* (1871), L. R. 3 P. C. 548); consequently, in the case of leaseholds, they become liable for the breach of any covenant in the lease assigned to them (*Batson* v. *London School Board*, [1903] 67 J. P. 457). It must be remembered, however, that this fact will not justify a local authority in expending the rates upon the upkeep of property acquired by them without authority.

Redemption of tithes.

As to the redemption of tithes on land taken for public purposes, see 41 & 42 Vict. c. 42, s. 1.

Production of stamped conveyance.

As to the necessity of producing to the Commissioners of Inland Revenue, after the completion of a purchase, the deed of conveyance, duly stamped, see s. 12 of the Finance Act, 1895, and see *Eastbourne Corporation* v. *Attorney-General*, [1904] A. C. 155; *Attorney-General* v. *Felixstowe Gaslight Co.*, [1907] 2 K. B. 984; and *Lord Advocate* v. *Caledonian Rail. Co.* (1908), S. C. 566.

Sale of lands.

It does not readily appear how the local authority can have occasion to sell land *for the purposes of the Act*, unless the sale is for the purpose of acquiring other more convenient land. But 35 & 36 Vict. c. 79, s. 41, enabled sanitary authorities in certain cases to mortgage their property, and this power is contained in s. 235, *post.*

As to the sale of land by urban authorities as municipal corporations, see ss. 108, 109 of the Municipal Corporation Act, 1882 (45 & 46 Vict. c. 50); *Davies* v. *Leicester Corporation*, [1894] 2 Ch. 208; and *Canterbury Corporation* v. *Cooper* (1909), 73 J. P. 225. As to the power of a statutory corporation to alienate lands and in particular to dedicate them, see *Taff Vale Rail. Co.* v. *Pontypridd U. D. C.* (1905), 69 J. P. 351.

As to the sale by auction by local authorities of surplus lands under restrictive conditions, reference might be made to *Holford* v. *Acton U. D. C.*, [1898] 2 Ch. 240; and to *Attorney-General* v. *Richmond Corporation and Josling & Sons* (1903), 68 J. P. 73.

As to the power of local authorities to purchase land beyond their strict necessities with a view to reimbursement, see *Galloway* v. *London Corporation* (1866), L. R. 1 H. L. 34; *Quinton* v. *Bristol Corporation* (1874), L. R. 17 Eq. 524); *Gard* v. *London Commissioners of Sewers* (1885), 28 Ch. D. 486; *Donaldson* v. *South Shields Corporation* (1899), 68 L. J. Ch. 162; *Aldis* v. *London Corporation of*, [1899] 2 Ch. 169; *Fernley* v. *Limehouse District Board* (1900), 64 J. P. 328.

Purchase for purposes of exchange.

The answer to the question whether a local authority can purchase land for the express purpose of exchanging it for other land which they require for some purpose of the Act, would seem to be in the affirmative, and it is believed that in some instances the Local Government Board have sanctioned loans under these circumstances.

Disposal of surplus lands; right of pre-emption.

The direction to sell lands not required is peremptory; nevertheless, some discretion must be left to the local authority as to their action under this clause, and as to when they will sell. It must be noticed that the Lands Clauses Consolidation Acts referred to in the next section provide for the sale of superfluous lands, but it would appear that the section in the text supersedes that provision, interposing the control of the Local Government Board. The Local Government Board have, however, expressed the view that s. 128 of the Lands Clauses Consolidation Act, 1845, which gives a vendor a right of pre-emption over land sold to a local authority, is not superseded by the present section, and is not restricted to cases of compulsory purchase. See the section, *post*, p. 1245.

In the case of lands purchased by means of borrowed money the Local Goverment Board practically bring pressure to bear upon a local authority to dispose speedily of so much of such lands as are not required for the actual improvement, by requiring the estimated cost to be divided, and assigning a short term (usually five years) for the repayment of that part of the loan which represents the estimated value of the surplus property.

In consequence of the wording of the section it would seem to be legally impracticable for a district council to borrow money for the *net* cost of an improvement, *i.e.*, for the estimated difference between the cost of land purchase and the amount to be immediately realised by resales. The council should borrow for the whole cost on terms which will admit of sale proceeds being applied at short notice towards repayment.

But for the provisions of the section the local authority could not, as it seems, have sold any of the lands which they had acquired. See *Tepper* v. *Nicols* (1864), 18 C. B. (N.S.) 121.

Land acquired by a local authority under the Public Health Act, 1875, for a definite purpose may, in the interval before it is required for such purpose, be used in any lawful manner which does not substantially interfere with its immediate use, when so needed, for the purpose for which it was acquired; it is not necessary that during such interval the land should be kept in the same state in which it was when acquired (*Attorney-General* v. *Teddington U. D. C.*, [1898] 1 Ch. 66).

But an authority must be careful not to permanently apply the land so purchased to any other purpose than that for which it was acquired, except with due licence properly obtained. Where a corporation under a local Act obtained a piece of land for the purpose of public recreation, they were restrained by injunction from holding a fair and exhibition of cattle upon it (*Attorney-General* v. *Southampton Corporation* (1859), 29 L. J. Ch. 282) This has been further elucidated in *Attorney-General* v. *Sunderland Corporation* (1876), 2 Ch. D. 634, where a corporation were allowed to build a museum and library on a part of a public park, but were restrained from building a council chamber and offices thereon. See also *Williamson* v. *Sunderland Corporation* (1892), 9 T. L. R. 143.

A local authority had purchased compulsorily under the powers of a Provisional Order of the Local Government Board made under s. 176 of the Public Health Act, 1875, and duly confirmed by Parliament, certain land for the purposes of sewage disposal, some additional land adjoining being

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also purchased shortly afterwards. A part of the area thus acquired was eventually found to be unsuitable for sewage disposal, and the council, instead of selling it, proposed to erect on this surplus land a small-pox hospital. The Local Government Board, purporting to act under s. 175, gave a direction that the land should be retained by the council as a site for a small-pox hospital. The Court of Appeal decided that the language of s. 175 was not wide enough to empower the Local Government Board, in directing that the land should not be sold, to authorise its permanent appropriation to a purpose wholly inconsistent with the particular purpose for which it was acquired (*Attorney-General* v. *Hanwell U. D. C.*, [1900] 2 Ch. 377). The land in the last-mentioned case was purchased compulsorily, but the case next referred to shows that the principle of the decision applies equally to land purchased by agreement.

A local authority, acting under the powers given to them by a provisional order duly confirmed, which incorporated the Electric Lighting Acts, purchased land by agreement for the purpose of erecting thereon works for generating electricity. At the time of the purchase they had decided to utilise part of the land as a site for a refuse destructor, the intention being that the surplus heat produced by the consumption of refuse should be used in aid of the machinery for generating electricity. There is power under the Public Health Act, 1875, to acquire land for the erection of a refuse destructor, but the Court held that the land was not in fact acquired in exercise of the powers of that Act, and that the erection and use of the destructor was not ancillary to the supply of electricity, and that, therefore, what the authority proposed to do was *ultra vires* (*Attorney-General* v. *Pontypridd U. D. C.*, [1906] 2 Ch. 257). The question whether a local authority, having powers to acquire land under two different statutes for two different purposes, can, by an exercise of their combined powers, acquire land as a whole, partly for the one purpose and partly for the other, without distinguishing what part is acquired for the one purpose and what part for the other, was left open. See *per* ROMER, L.J., in the last-mentioned case.

In view of the decisions referred to above, it would seem that even where a conveyance is in general terms, those terms cannot widen the range of purposes for which land was acquired so as to cover objects not within the contemplation of the district council.

See now, however, s. 95 of the Public Health Acts Amendment Act, 1907, which is in the following terms:

"The powers of a local authority under sections one hundred and seventy-five and one hundred and seventy-six of the Public Health Act, 1875, shall extend to highway purposes, and notwithstanding anything in section one hundred and seventy-five of the Public Health Act, 1875, or any general provision in any local Act, any lands acquired by a local authority and not required for the purposes for which those lands have been acquired may be appropriated for any purpose approved by the Local Government Board, subject, nevertheless, to any special covenant or condition affecting the use of the lands attached thereto at the time of the purchase by the local authority, or to any special provision affecting the use of the lands contained in any local Act: Provided that the local authority shall not, on any lands so appropriated, create or permit any nuisance; and that the local authority shall not, on any such lands, sink any well for the public supply of water, or construct any cemetery, burial ground, destructor, station for generating electricity, sewage farm, or hospital for infectious disease, unless, after local inquiry and consideration of any objections made by persons affected, the Local Government Board, subject to such conditions as they think fit, authorise the work or construction.

"Nothing in this section shall affect any rights acquired before the commencement of this section under any judgment or order of a court of competent jurisdiction, or under any agreement in writing, but if a dispute, one of the parties to which is a local authority, arises under such an agreement as to any such right, the dispute shall, if either party so require, be settled by the Local Government Board as if it were a doubt or difference within the

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meaning of section three hundred and four of the Public Health Act, 1875, and the Local Government Board may for that purpose deal by Order with any matters which may be dealt with by an Order or Provisional Order under the said section."

The section only applies to districts in which it has been put in force by order of the Local Government Board.

See also the provisions in s. 1 of the Education (Administrative Provisions) Act, 1907, as to the appropriation of land by a district council which is a local education authority.

It is rather difficult to define the precise powers vested in the Local Government Board by the words "unless the Local Government Board otherwise direct it," having regard to the decision in the case of *Attorney-General* v. *Hanwell*, *supra*. In an ordinary case in which a district council propose to dispose of surplus lands, the Board state that they do not propose to give any directions which will preclude the council from selling the lands in accordance with the requirements of the section.

A sale of land under the powers conferred by the section in the text need not, it is submitted, necessarily be by public auction. A sale by private treaty after advertisement would seem to satisfy the section. Nor does the word "price" necessarily mean a cash payment to the exclusion of every other kind of consideration.

As regards the provision in the section as to the application of proceeds of sale, the Local Government Board have stated that if principal moneys cannot be at once repaid, the sale proceeds should be invested as a sinking fund in securities prescribed by s. 234 as amended by the Trustee Acts, and applied periodically in discharge of sums due to the lenders. There is apparently no infringement of the Act if the amount is absorbed by one such payment, with the result that the ratepayers for the current year obtain the full benefit of the sale.

Regulations as to purchase of land.

176. With respect to the purchase of lands by a local authority for the purposes of this Act, the following regulations shall be observed; (that is to say,)

(1.) The Lands Clauses Consolidation Acts, 1845, 1860, and 1869, shall be incorporated with this Act except the provisions relating to access to the special Act, and except section one hundred and twenty-seven of the Lands Clauses Consolidation Act, 1845:

(2.) The local authority, before putting in force any of the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, shall—

Publish once at the least in each of three consecutive weeks in the month of November, in some local newspaper circulated in their district, an advertisement describing shortly the nature of the undertaking in respect of which the lands are proposed to be taken, naming a place where a plan of the proposed undertaking may be seen at all reasonable hours, and stating the quantity of lands that they require; and shall further

Serve a notice in the month of December on every owner or reputed owner, lessee or reputed lessee, and occupier of such lands,

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defining in each case the particular lands intended to be taken, and requiring an answer stating whether the person so served assents, dissents, or is neuter in respect of taking such lands :

(3.) On compliance with the provisions of this section with respect to advertisements and notices, the local authority may, if they think fit, present a petition under their seal to the Local Government Board. The petition shall state the lands intended to be taken, and the purposes for which they are required, and the names of the owners lessees and occupiers of lands who have assented dissented or are neuter in respect of the taking such lands, or who have returned no answer to the notice ; it shall pray that the local authority may, with reference to such lands, be allowed to put in force the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, and such prayer shall be supported by such evidence as the Local Government Board requires :*

(4.) On the receipt of such petition and on due proof of the proper advertisements having been published and notices served the Local Government Board shall take such petition into consideration, and may either dismiss the same, or direct a local inquiry as to the propriety of assenting to the prayer of such petition ; but until such inquiry has been made no provisional order shall be made affecting any lands without the consent of the owners lessees and occupiers thereof :

(5). After the completion of such inquiry the Local Government Board may, by provisional order, empower the local authority to put in force, with reference to the lands referred to in such order, the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, or any of them, and either absolutely or with such conditions and modifications as the Board may think fit, and it shall be the duty of the local authority to serve a copy of any order so made in the manner and on the person in which and on whom notices in respect of such lands are required to be served :

Provided that the notices by this section required to be given in the months of November and December may be given in the months of September and October or of October and November, but in either of such last-mentioned cases an inquiry preliminary to the provisional order to which such notices refer shall not be held before the expiration of one month from the last day of the second of the two months in which the notices are given ; and any notices or orders by this section required to be served on a number of persons having any right in over or on lands in common may be served on any three or more of such persons on behalf of all such persons.

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* See Instructions of Local Government Board, *post*, p. 932.

[This note, other than that portion of it which relates to "Lands," "Easements," and "Water rights," is substantially a reproduction of the note under s. 176 of the Public Health Act, 1875, in the last (7th) edition of Lumley's Public Health, vol. 1, by Mr. A. Macmorran, K.C., and the present editor of this work].

"Lands," "easements," and "water rights."

The term "lands" is by s. 4 defined to include "messuages, buildings, lands, easements and hereditaments of any tenure." Sect. 327, *post*, p. 914, provides that nothing in the Act shall be construed to authorise any local authority to interfere with any watercourse in such manner as to injuriously affect the supply of water to any river, canal, etc.; and s. 332, *post*, p. 917, provides that "Nothing in this Act shall be construed to authorise any local authority to injuriously affect any reservoir, canal, river or stream, or the feeders thereof, or the supply, quality or fall of water contained in any reservoir, canal, river, or stream, or in the feeders thereof, in cases where any body of persons or person would, if this Act had not passed, have been entitled by law to prevent or be relieved against the injuriously affecting such reservoir, canal, river, stream, feeders, or such supply, quality or fall of water, unless the local authority first obtain the consent in writing of the body of persons or person so entitled."

The rights of riparian proprietors to the use and enjoyment of water are not properly easements, but may be more accurately described as "natural rights." An "easement" presupposes both a servient and a dominant tenement. It is thus defined: "A privilege without profit which the owner of one neighbouring tenement hath of another existing in respect of their several tenements, by which the servient owner is obliged to suffer or not to do something on his land for the advantage of the dominant tenement" (Gale on Easements, 7th ed., p. 6; Goddard on Easements, 5th ed., p. 2; and see judgment of Lord CAIRNS in *Rangeley* v. *Midland Rail. Co.* (1868), L. R. 3 Ch. 306). An easement of this nature is created by the act of man, as by grant or prescription. But the right of a landowner to the water upon or which flows by his land is a natural right inherent in his land *ex jure naturæ*. It is therefore a "natural right" rather than an easement. "The purpose of natural rights is to secure necessary support for land from the adjacent and subjacent soil, while it is allowed to remain in its natural condition, and the due enjoyment of air, light and water which, by the provision of nature, flow over the soil of one landowner to that of another for the common benefit of each" (Goddard on Easements, 4th ed., p. 3).

In the case of *West Houghton*, in the session of 1877, the Local Government Board, taking apparently the view that the definition of the word "lands" in the Act of 1875, was such as to enable them to authorise compulsory interference with riparian water rights, made a provisional order authorising the local authority of that district to put in force the provisions of the Lands Clauses Act as to the compulsory acquisition of land with reference to certain lands and premises and certain "waters and water rights." When the confirming Bill came before a select committee of the House of Lords the preliminary objection was taken on behalf of a number of petitioners opposing in respect of riparian and other water rights that the provisional order was *ultra vires* and invalid, and that s. 297 (*post*, p. 898) only authorised the Local Government Board to submit to Parliament for confirmation any provisional order made by it "in pursuance of this Act." After a lengthened argument, the select committee sustained the preliminary objection, and the provisional order was rejected without entering on its merits (Jl. of G. L., July 31st, 1877, vol. 30, p. 174).

The following is an extract from the report of the select committee on the Public Health Act, 1875, Amendment Bill of the session of 1878 [Parliamentary Paper, No. 134]

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"3. The committee have been impressed with the importance of amending a defect which has been found to exist with regard to the taking of water otherwise than by agreement. From the date of the passing of the Public Health Act up to last session of Parliament, it was believed that provisional orders could be obtained under the Act by which water rights could be compulsorily taken.

"Several provisional orders have been obtained under the belief that the compulsory taking of water rights by provisional order was legal under the meaning assigned to the word 'lands,' the word 'lands' being defined to include 'messuages, buildings, lands, easements, and hereditaments of any tenure'; and it was thought that under the definition a local authority could purchase water rights compulsorily under the 176th section of the Act of 1875. During the last session of Parliament a committee of the House of Lords, when considering a provisional order for the compulsory purchase of water rights under that section by the local board of the West Houghton district, decided that the order was *ultra vires*, and consequently it was not confirmed.

"The law officers of the Crown were then consulted, and they advised: 'We are of opinion that in issuing a provisional order under the 176th section of the Public Health Act, 1875, the Local Government Board cannot confer upon a local authority power to purchase for the purposes of the Act and otherwise than by agreement, any right to abstract water from any stream.'

"It follows from this that a provisional order which proposes to take water rights otherwise than by agreement cannot be made under the Public Health Act.

"4. The committee are of opinion that this decision will produce serious inconvenience to sanitary authorities, for it is apparent that before water from a stream can be taken by a sanitary authority for the water supply of its district, an agreement would have to be made with every owner, lessee, and occupier below the proposed intake, who may be affected by the abstraction of the water. The statement of the case is sufficient to show how difficult it would be to obtain the consent of those having these water rights.

"A sanitary authority could still obtain compulsory powers by a private Bill; but it has been pointed out that the cost of obtaining a private Bill is much higher than that of obtaining a provisional order."

"(5.) The committee, therefore, recommend that, with the view of affording to local authorities facilities for acquiring the right to take water from any stream, the Local Government Board should be empowered to issue provisional orders which, on confirmation by Parliament, would confer powers on the local authority for the purpose.

"The committee are of opinion that the provisional order should incorporate the Waterworks Clauses Act, 1847, in the same manner as is usual in a private Bill, but prior to the issue of the provisional order the notices which, in the case of a private Bill, would be necessary under the Standing Orders of Parliament, should in all cases be published and served by the local authority.

"The committee have had a clause laid before them which will be found in the Appendix, in the paper handed in by Mr. H. Owen, and which they recommend to the attention of Parliament." (See p. vi. of Report and Appendix, pp. 122, 123).

Notwithstanding this report no change in the law, in the respect indicated, has been made up to the present time.* Where, therefore, the works contemplated by a local authority will, by abstraction of water from streams, etc., interfere with riparian and other water rights, and the local authority have to resort to compulsory powers, their proper course is to promote a Bill in Parliament in the usual way, instead of applying to the Local Government Board for a provisional order. For an example of such a Bill, see Uttoxeter Water Act, 1892 (55 & 56 Vict. c. clxxxix.). This was a Bill promoted by the rural sanitary authority of Uttoxeter. It was at first opposed by the landowners, but afterwards an agreement was come to with them which is scheduled to the Act. Whilst the whole Act affords an excellent form, the following section may be particularised:

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* In Ireland, under ss. 202, 203 of the Public Health (Ireland) Act, 1878, a sanitary authority has power to apply to the Local Government Board for a provisional order to acquire water rights compulsorily (see *O'Callaghan* v. *Balrothery R. D. C.*, [1907] 1 Ir. R. 494).

> 47. All costs, charges and expenses of and incident and preparatory to the obtaining and passing of this Act or otherwise in relation thereto as taxed and ascertained by the taxing officer of the House of Lords or the House of Commons shall be paid as special expenses of the contributory places under this Act as hereinbefore provided for or otherwise out of revenue under this Act of the sanitary authority, or out of money to be borrowed by the sanitary authority under this Act.

The scheduled agreement will also be found to be a useful precedent.

There are also lands of other kinds which cannot be taken, even if a provisional order is obtained, without a certain procedure, and it will, therefore, be convenient to mention here the practice of the Local Government Board when lands of various descriptions are scheduled by local authorities for compulsory purchase.

Crown lands.

Lands vested in the Crown cannot be taken compulsorily. At the same time the Local Government Board are apparently willing to insert such lands in a provisional order if the district council obtain the assent of the Government department concerned to the scheme proposed. A special protective clause is, however, usually inserted in the order.

Railway property.

Railway lands are not made the subject of special provision in the Act (except in such matters as are referred to in s. 157), but the Board require the assent of the company in every case in which such lands are stated to be required.

Consecrated lands, churches, chapels, etc.

The Local Government Board invaribly decline to issue a provisional order purporting to give compulsory powers in respect of consecrated lands. Possibly a district council may be able to effect their purpose by procuring a faculty. Roman Catholic chapels and other places of worship not of the Established Church may, however, be scheduled.

Lands containing human remains.

If an improvement involves the disturbance of human remains a licence from the Secretary of State is required, and a provision will probably be inserted in the order requiring this step to be taken before the lands are disturbed.

Lands forming part of highways.

If lands required for purposes of an improvement under the Act form part of a highway, an order of justices under ss. 82 *et seq.* of the Highway Act, 1835, is required, and the issue of a provisional order will not relieve the district council from the necessity for taking this procedure.

Lands required for local Act undertakings.

With regard to the proposed acquisition under s. 176 of the Act of 1875 of lands which are required for the purposes of any undertaking (such as waterworks) which may be carried on under the special powers contained in a local Act, the Local Government Board have expressed themselves to the following effect: "It appears to the Board that the provisions of the Public Health Act, 1875, as to the purchase of lands for the purposes of that Act do not apply, and they are not, therefore, in a position to issue the provisional order applied for. In a similar case in which application had been made by a local authority to the Board for an order under s. 176, the Board were advised by the law officers of the Crown that they had no power to issue the order asked for, in consequence of the land being required for the purposes of the local Act and not for the purposes of the Public Health Act."

Nor can compulsory powers for land purchase apparently be obtained in such a case by means of a provisional order altering the local Act in pursuance of s. 303 of the Public Health Act, 1875. If, however, the required

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lands can be obtained by agreement, an order might be obtained under that section authorising the purchase and conferring any requisite borrowing powers.

The above doctrine would probably not apply in the case of sewerage works, in view of the provisions of s. 15 of the Act of 1875.

Part of house.

It frequently happens that a district council in connection with a scheme of improvement desire to obtain compulsory powers over part only of a property, and with this object desire a provision to be inserted in the order depriving an owner of his power to require them to purchase the whole. See s. 92 of the Lands Clauses Consolidation Act, 1845. It appears to be the practice, however, of the Local Government Board to refuse applications of this character.

Extension of period for operation of order.

The Board also decline in ordinary circumstances to insert in provisional orders, or in Bills for the confirmation of such orders, any provision extending the time (limited to three years by s. 123 of the Lands Clauses Consolidation Act, 1845) during which the powers may be exercised. In cases where powers have been given over the same lands by previous orders which have been allowed to lapse, the time given is sometimes restricted to one year or two years.

Extent of land scheduled.

The Local Government Board are apparently willing, in cases of schemes of street improvement and the construction of new streets, to include in their Order sufficient land to enable the district council to obtain a good saleable frontage.

Alternative sites.

The Local Government Board do not apparently refuse to entertain an application in relation to two or more pieces of land, only one of which will be required for the purposes of the improvement, provided that all the necessary preliminaries have been observed. The Board require, however, that the district council should decide at an early date as to the lands which they are to be empowered to acquire, as under no circumstances can compulsory powers be given for alternative sites.

Owners willing to sell at a price.

If the owners and lessees of lands are willing to sell at a price to be fixed by arbitration, and will enter into an agreement for that purpose, the Local Government Board have expressed the view that a Provisional Order is not necessary.

Owners unable to give title.

The Local Government Board do not consider it necessary to issue a Provisional Order for the sole reason that owners cannot produce a satisfactory title. The Board draw attention to s. 75 of the Lands Clauses Consolidation Act, 1845, which enables a district council in such circumstances to execute a valid conveyance to themselves. That section is equally applicable whether lands are purchased by agreement or compulsion,

Lands for water mains.

It is unnecessary to obtain compulsory powers under s. 176 in connection with the laying of water mains through lands in view of the powers of a district council under s. 54. See that section and the notes thereto.

The Local Government Board state as follows (in their Annual Instructions):

Lands beyond district.

"If the local authority intend to apply for a provisional order to enable them to purchase lands compulsorily in connection with proposed works of sewerage or water supply, some of which will lie outside their district, they will probably find it convenient to satisfy the requirements of section 32 or section 54 of the Public Health Act, when they are taking the necessary proceedings for the provisional order; but the advertisements and notices under those sections and the proof of compliance with the statutory provisions should be distinct from the advertisements, notices and proofs under section 176 of the Act. If this course is adopted it may have the effect of preventing delay at a subsequent stage of the proceedings in cases where advertisements and notices under section 32 or section 54 have to be issued before the works for which the land is required can be commenced."

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Sites for reservoirs.

If lands are required as a site for a reservoir which is to hold more than 100,000 gallons of water, s. 53 should be complied with. See that section and the notes thereto.

Sect. 127 of the Lands Clauses Consolidation Act 1845, requires the sale, within a certain time, of superfluous land, *i.e.*, land not required for the purposes of the undertaking, a definition whereof is given by Lord CAIRNS in *Great Western Rail. Co.* v. *May* (1874), L. R. 7 H. L. 283, at p. 292. If no sale be effected within the prescribed time, the land vests in the owner of the adjoining land.

Compulsory powers can only be put in force for authorised purposes.

In a case which arose under the corresponding sections of the Education Act, 1870, a school board served on R. a notice to treat, all the previous preliminaries having been complied with. Prior, however, to the service of the notice to treat and to the passing of the Confirmation Act, the board had entertained and adopted, subject to the sanction of the Education Department, a proposal from one B., a neighbouring landowner, for exchanging a portion of the land to be acquired by the board from R. for a piece of B.'s land, he undertaking to form the land so to be conveyed to him by the board into a public road. There was evidence to show that such road, when made, would be advantageous to the school intended to be erected. It was held, on motion by R. for an injunction to restrain the board from putting in force their statutory powers with respect to so much of the land comprised in the notice to treat as they proposed to convey to B., that the board were justified in the course they had taken, and could, if they obtained the sanction of the Education Department, carry out the proposal (*Rolls* v. *London School Board* (1884), 27 Ch. D. 639). See also *Batson* v. *London School Board* (1903) 67 J. P. 457, when CHANNELL J., held that if the purpose for which land is proposed to be taken is *ultra vires*, a local authority may be restrained from taking the land notwithstanding a provisional order has been obtained.

Powers must be exercised in good faith.

In a recent case under Michael Angelo Taylor's Act the bona fides of a local authority and their motive for exercising their compulsory powers were called in question. The London County Council obtained powers to construct an electric tramway along a certain street. The proposal had been opposed by the Hammersmith Borough Council on the ground that the street was too narrow for the purpose ; but, after negotiations, this opposition was withdrawn, and an agreement was entered into between the county council and the borough council by which the street was to be widened, and the borough council agreed to assist the county council in obtaining consents to the widening. The county council could not come to terms with certain owners, and, having no compulsory powers of purchase, they applied to the borough council, and requested them, in pursuance of their agreement, to put into force their compulsory powers under Michael Angelo Taylor's Act. The borough council accordingly passed a resolution that these powers should be exercised, and formally adjudged that the land in question "projects into, obstructs or prevents the council from . . . altering, widening, or extending the said street." Notice to treat was formally served, and an action was brought by the owners to restrain the borough council from exercising their powers under this Act on the ground that this was not a bonâ fide adjudication by the borough council, and that the proposed improvement was not within the meaning of the Act. It was held, upon the facts that there was an honest and bonâ fide determination on the part of the borough council that it was expedient to widen the street, and none the less so because it was occasioned by the introduction of the tramway by the London County Council (*Parry* v. *Hammersmith Borough Council* (1904), 69 J. P. 35). The good faith of local authorities was also unsuccessfully challenged in other recent cases, viz., in *Pescod* v. *Westminster Corporation*, [1905] 2 Ch. 475 ; and in *Westminster Corporation* v. *London and North Western Rail. Co.*, [1905] A. C. 426. See also *Robbeck* v. *Bournemouth Corporation*, 24 M. C. C. 177 ; *Times*, March 17, 1902, where a question as to the bona fides of a notice to treat was raised.

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Advertisement in newspaper.

The advertisement must appear in three consecutive weeks, but it is not necessary that a week should elapse between two insertions. Thus, if the advertisement appear on a Saturday it can appear again on the following Monday. The point is sometimes of importance when a month ends in the middle of a week.

The advertisement must appear three times in one and the same newspaper.

Plan of undertaking.

The undertaking in respect of which the lands are required must be shown on the plan. The Local Government Board in their printed instructions state as follows: "The deposited plan, which should be carefully corrected *on the ground*, should show not only the lands to be purchased, and the parish in which they are situated, but also the manner in which those lands will be ultilised for the purposes in view, and the position, as nearly as practicable, of any buildings, tanks, reservoirs, or other works to be erected or constructed on the lands. The position in relation to the lands of any sewers, pipes, or other works, which may be contemplated as part of the undertaking for which the lands are required, should also be shown.

See, as to the extent to which a plan will bind the local authority, *Bradshaw* v. *Bray Urban District Council*, [1906] 1 I. R. 560; affirmed on appeal, [1907] 1 I. R. 152; and see also *North British Rail. Co.* v. *Tod* (1846), 12 Cl. & F. 722; *Att.-Gen.* v. *Great Eastern Rail. Co.* (1873), L. R. 6 H. L. 367.

It is advisable to state the quantity of land in acres or square yards with the words "or thereabouts" in addition to giving a description of the lands.

Notices on owners, etc.

See s. 267 of the Public Health Act, 1875, as to how notices are to be served in general, and the proviso to the section in the text as to the service on commoners. It has been held that the giving of notice does not bind the local authority to proceed, and that their omission to take the lands specified in the notice gives no right of action to the owner of lands, even after the confirmation of the provisional order empowering such lands to be taken (*Burges* v. *Bristol Sanitary Authority* (1886), 50 J. P. 455; and see *Burr* v. *Wimbledon Local Board*, W. N. (1887), p. 155).

Persons to be served with notice.

For one meaning of the word *owner*, see s. 4 of the Public Health Act, 1875, though that is not the only meaning to be adopted in construing this section. In 8 & 9 Vict. c. 18, s. 3, the word *owner* is to be "understood to mean any person or corporation who under that or the special Act would be enabled to sell or convey land for the purposes of the undertaking." And under this section it was held that notice ought to be given to persons known to be mortgagees of the property intended to be taken (*Martin* v. *London, Chatham and Dover Rail. Co.* (1866), L. R. 1 Ch., 501). But, *quære*, who is meant by a *reputed* owner or *reputed* lessee? And will a notice upon such reputed owner or lessee be available where there is a real owner or real lessee who is not served? It seems that the notice must be served upon the owner, lessee, and occupier. But if the local authority can select any person as the reputed owner or reputed lessee there may often be a failure of due notice to the proper parties. 8 & 9 Vict. c. 18 does not refer to reputed owners. However, the poor rate of every parish now contains a column for the owner of the property assessed, and the overseers fill in the column with a name which often represents the reputed owner—that is, the name of a person who is believed by them to be the owner.

Attention should be paid to the ownership of highways and streets, for there is no power to take streets without notice such as is given by the Railways Clauses Act, 1845 (8 & 9 Vict. c. 20), s. 16, as to which see *Souch* v. *East London Rail. Co.* (1873), L. R. 16 Eq. 108. Where highways are not repairable by the inhabitants at large, the presumption is that the soil belongs to the owners of adjoining lands, but where they are so repairable, they are vested, in the case of highways in an urban district, in the urban

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authority under s. 149 of the Public Health Act, 1875. It is probable, however, that having regard to the decision in *Tunbridge Wells Corporation* v. *Baird*, [1896] A. C. 434, an urban authority must serve notices in respect of the highways so vested in them.

As to the right of a local board to a way of necessity to lands compulsorily acquired by them for the purposes of a sewage farm, see *Serff* v. *Acton Local Board* (1886), 31 Ch. D. 679.

A notice served upon one of the several joint owners who acts for the rest appears to be sufficient.

Petition to Local Government Board.

The petition to the Local Government Board referred to in the section in the text must mention the purport of the answers received from the owners, etc.; it should not be presented until a reasonable time has elapsed since the notices were served. The petition should contain a schedule giving the lands proposed to be taken in a form corresponding with the book of reference. See the Local Government Board instructions, at p. 932, *post*.

Two or more local authorities cannot jointly petition for a provisional order to enable them to put in force the compulsory powers of the Lands Clauses Acts. Either each local authority must present a separate petition in respect of the particular lands which they require, or else the several local authorities must combine under s. 285 of the Public Health Act, 1875, for the purpose of carrying the proposed scheme into execution, and a petition must be presented by one of them with regard to all the land required. If the latter course is taken, an agreement under the section should be entered into before application is made for the Provisional Order, and a copy of the agreement should accompany the application.

Circular letters and instructions are annually issued to local authorities by the Local Government Board relative to applications for provisional orders under the Public Health Act, 1875, and other Acts. Those applicable to orders under s. 176 of the Act of 1875, explain in detail the provisions of the statute and the requirements of the Board, and should be carefully studied by the officers of a district council intending to apply for such an order. The instructions for the session of 1911 are set out at p. 932, *post*.

It is also necessary to comply with the Standing Orders of Parliament applicable to such provisional orders, and to furnish the Local Government Board with proof of the fact in the manner set out in the Board's instructions.

Standing Order 38 of both Houses of Parliament provides as follows: "Where any Bill contains or revives or extends power to take compulsorily or by agreement any land in any local area as defined for the purposes of this Order, and such taking involves or may involve the taking in that area of any house or houses occupied either wholly or partially by thirty or more persons of the working class, whether as tenants or lodgers, the promoters shall deposit in the Private Bill Office (in the case of the House of Lords, at the office of the Clerk of the Parliaments) and at the office of the central authority on or before the 21st day of December, a statement giving the description and postal address of each of such houses, its number on the deposited plans, the parish in which it is situate, and the number (so far as can be ascertained) of persons of the working class residing in it, and also a copy of so much of the deposited plans (if any) as relates thereto." The Standing Order does not apply where a statement in pursuance thereof was deposited in respect of the Act, the powers of which are proposed to be revived or extended. See also s. 3 of the Housing of the Working Classes Act, 1903.

Standing Order 39 is to the effect that whenever plans, sections, or books of reference or maps are deposited in the case of a provisional order . . . proposed to be made by any public department . . . duplicates of the said documents shall also be deposited at the Private Bill Office (in the case of the House of Lords, at the office of the Clerk of the Parliaments). There is a proviso with regard to early applications when the parliamentary offices are not open.

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See s. 297, *post*, and the notes thereto, as to the restriction upon the making of a provisional order.

The dismissal of a petition by the Local Government Board may take place without local inquiry, as the Board may consider that upon the petition and the opposition to it no order should be issued.

Additional lands.

If the Act affirming the provisional order gives power to take more lands than those mentioned in the notice, it appears that such additional lands may be taken (*Jacomb* v. *Huddersfield Corporation* (1874), L. R. 10 Ch. 92). As to the delineation of the lands in the deposited plans, see *Dowling* v. *Pontypool, &c. Rail. Co.* (1874), L. R. 18 Eq. 714.

Copies of order.

When only a few copies are required, the Local Government Board will supply them, but when a considerable number are required, an arrangement can be made with the Government printer for the supply of the copies at a reasonable rate. The statute does not render this service a preliminary to the introduction of the confirming Bill. Probably, however, the Bill might be stayed by Parliament if it were shown that no copy of the order had been served in time to allow a petition to be presented against it within the appointed time, as s. 297 (7), *post*, only makes the order *primâ facie* evidence that all proceedings previous to the making of the order have been duly taken.

Service on commoners.

See the provisions of 8 & 9 Vict. c. 18, ss. 102—107, as to compensation for common lands.

Extinction of easements.

It may be here observed that where houses or lands are taken under compulsory powers, easements belonging to the owners of adjoining properties not purchased, if they interfere with the proposed use of the houses or lands taken, may be destroyed, the owners being entitled to compensation. The readiest illustration is that of the right to lights, as to which see *Clark* v. *London School Board* (1874), L. R. 9 Ch. 120; *Bedford* (*Duke of*) v. *Dawson* (1875), L. R. 20 Eq. 353; *Baker* v. *St. Marylebone* (*Vestry of*) (1876), 35 L. T. (N. S.) 129. It was held that a local education authority taking land by agreement for the purposes of the Elementary Education Act, 1870, were not liable to an action for breach of a restrictive covenant, by which the land was bound in the hands of their vendor, but that the only remedy of the covenantee was compensation under s. 68 of the Lands Clauses Consolidation Act, 1845 (*Kirby* v. *Harrogate School Board*, [1896] 1 Ch. 437). See further on this subject section 68 of the Lands Clauses Act and the notes thereon, and notes pp. 1194 *et seq.*

Encroachment beyond boundary of acquired lands.

A recent case where a local authority who had acquired land compulsorily for waterworks purposes, and who trespassed on adjoining land, might here be referred to. The defendant corporation, in course of constructing a reservoir, at a depth of 123 feet below the surface, inadvertently carried a heading 18 feet by 6 feet for a distance of 42 feet beyond their own boundary into the plaintiff's land. The excavation was made for the purpose of stopping a fissure in the soil, which might have caused a leak in the reservoir, and it was filled up with concrete and brickwork, the surface of the plaintiff's land being in no way interfered with. The plaintiff claimed a mandatory order against the defendants to restore the land to its former condition. The cost of doing this would have amounted to £1,000. Before action the defendants offered to pay £100 by way of damages, and before delivery of the defence paid £10 into court. It was held by JOYCE J., that, having regard to the authority of *Shelfer* v. *City of London Electric Lighting Co.*, [1895] 1 Ch. 287, the court had a discretion to give damages in lieu of an injunction; that this was a case for damages, and that the proper amount to be awarded was £100. His lordship said that it is not laid down as a rule in *Mayfair Property Co.* v. *Johnston*, [1894] 1 Ch. 508, that the measure of damages in such a case is the amount which it would cost to restore the land to its former condition (*Riley* v. *Halifax Corporation* (1907), 71 J. P. 428).

Costs of arbitration

When land has been taken compulsorily by a local authority under the powers of the Lands Clauses Consolidation Acts, incorporated by the Public

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Where land taken compulsorily.

Health Act, 1875, and an arbitration takes place to determine the amount of compensation to be paid to the owner of the land so taken, the procedure with regard to such arbitration and the right to costs are wholly governed by the provisions of the Lands Clauses Consolidation Acts, and not by those of the Public Health Act, with regard to arbitration under that Act (*Ex parte Rayner* (1878), 3 Q. B. D. 446; S. C. *sub nom. R.* v. *Smith*, 26 W. R. 812). *Cf. Brierley Hill L. B.* v. *Pearsall* (1884), 9 App. Cas. 595.

As to opposition in Parliament to provisional orders, see s. 297 (4), *post*, p. 898.

Elegit.

Land which had been conveyed to a local board of health for the purposes of the Public Health Acts, was used as a reservoir for the supply of water to the district of the local board. A judgment having been obtained against the local board, it was held that the land was liable to be taken under a writ of elegit (*Worral Waterworks Co.* v. *Lloyd* (1866), L. R. 1 C. P. 719).

As to construction of incorporated Acts.

By s. 316 it is provided that in the construction of the provisions of any Act incorporated with this Act the term "the special Act" includes this Act, and, in the case of the Lands Clauses Consolidation Acts, 1845, 1860, and 1869, any order confirmed by Parliament and authorising the purchase of lands otherwise than by agreement under this Act; the term "the limits of the special Act" means the limits of the district; and the urban or rural authority shall be deemed to be "the promoters of the undertaking," "the commissioners," or "the undertakers," as the case may be.

Power to let lands.

177. Any local authority may, with the consent of the Local Government Board, let for any term any lands which they may possess, as and when they can conveniently spare the same.

Provision or lands belonging to the duchy of Lancaster.

178. The chancellor and council of the duchy of Lancaster for the time being may, if they think fit, (but subject and without prejudice to the rights of any lessee, tenant, or occupier), from time to time contract with any local authority for the sale of, and may (subject as aforesaid) absolutely sell and dispose of, for such sum as to the said chancellor and council may appear sufficient consideration, the whole or any part of any lands belonging to Her Majesty, her heirs, or successors in right of the said duchy, or any right, interest, or easement, in, through, over, or on any such lands which for the purposes of this Act such local authority from time to time deem it expedient to purchase; and on payment of the purchase-money, as provided by the Duchy of Lancaster Lands Act, 1855, the said chancellor and council may grant and assure to the said authority, under the seal of the said duchy, in the name of Her Majesty, her heirs, or successors the subject of such contract or sale, and such money shall be dealt with as if such subject had been sold under the authority of the Duchy of Lancaster Lands Act, 1855.

Summary proceedings for recover of rates.

256. If any person assessed to any rate made under this Act by any urban authority fails to pay the same when due and for the space of fourteen days after the same has been lawfully demanded in writing, or if any person quits or is about to quit any premises without payment of any such rate then due from him in respect of such premises, and refuses to pay the same after lawful demand thereof in writing, any justice may summon the defaulter to appear before a court of summary jurisdiction to show cause why the rate in arrear should not be paid;

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The costs of the levy of arrears of any rate may be included in the warrant for such levy.

See *Elliott* v. *Russell,* cited *ante,* pp. 511, 864.

As to the jurisdiction of justices on the hearing of a summons under this section reference might be made to—*R.* v. *Derbyshire JJ.* (1855), 19 J. P. 772; *Luton Local Board* v. *Davis* (1860), 2 El. & El. 678; *Sandgate Local Board* v. *Pledge* (1885), 14 Q. B. D. 730; *Sheffield Waterworks Co.* v. *Mayor etc. of Sheffield* (1885), 50 J. P. 6; *R.* v. *Hannam* (1886), 34 W. R. 355; *Rochdale Building Society* v. *Rochdale* (*Mayor &c. of*) (1886), 51 J. P. 134; *Smith* v. *Barham* (1887), 51 J. P. 581; *Manchester* (*Overseers of*) v. *Headlam* (1888), 21 Q. B. D. 96; *Newport Corporation* v. *Lang* (1892), 57 J. P. 195; *Norwood* (*Overseers of*) v. *Salter,* [1892] 2 Q. B. 118; *Bates* v. *Plumstead Overseers* (1895), 59 J. P. 118; *Rayner* v. *Druitt* (1900), 64 J. P. 567; *Overseers of St. Stephens, Coleman Street* v. *Great Northern and City Rail. Co.* (1902), 66 J. P. 373; *R.* v. *Shuttleworth* (1908), 72 J. P. 329; *Hudson* v. *Rhodes,* [1909] 1 K. B. 85; *Dixon* v. *Blackpool and Fleetwood Tramway Co.,* [1909] 1 K. B. 860.

Local Government Board may invest rural authority with powers of urban authority.

276. The Local Government Board may, on the application of the authority of any rural district, or of persons rated to the relief of the poor, the assessment of whose hereditaments amounts at the least to one-tenth of the net rateable value of such district, or of any contributory place therein, by order to be published in the *London Gazette,* or in such other manner as the Local Government Board may direct, declare any provisions of this Act in force in urban districts to be in force in such rural district or contributory place, and may invest such authority with all or any of the powers rights duties capacities liabilities and obligations of an urban authority under this Act; and such investment may be made either unconditionally or subject to any conditions to be specified by the Board as to the time, portion of the district, or manner during at and in which such powers rights duties liabilities capacities and obligations are to be exercised and attach: Provided that an order of the Local Government Board made on the application of one-tenth of the persons rated to the relief of the poor in any contributory place shall not invest the rural authority with any new powers beyond the limits of such contributory place.

See further as to investing a rural authority with urban powers, 53 & 54 Vict. c. 59, s. 5; 55 & 56 Vict. c. 57, s. 4. See also s. 25 (5) of the Local Government Act, 1894 (56 & 57 Vict. c. 73), whereby rural district councils may have conferred upon them such powers, duties, and liabilities of urban authorities under the Public Health Acts, as the Local Government Board shall, by General Order, direct, and s. 25 (7) of the same Act which provides that the powers of the Local Government Board under the section in the text, or under any enactment applying that section, may be exercised on the application of a county council, or with respect to any parish or part of a parish, on the application of the parish council of that parish.

Urban authorities, by the following sections, possess powers which are not conferred upon rural authorities :

20. May make map of sewers in the district.
25. May inflict penalty for building house without drains.
26. May inflict penalty for building over sewers.
May inflict penalty for constructing vault or cellar under carriage-way.
39. May provide public urinals, etc.
42. Cleansing and watering of streets.
44. May make byelaws for prevention of nuisances arising from snow, filth, etc. For prevention of the keeping of animals so as to be injurious to health.
45. May provide receptacles for deposit of rubbish.
47. May inflict penalty for keeping swine or a pig-stye in a dwelling-house, so as to be injurious to health.
May inflict penalty for keeping stagnant water in dwelling-house.
May inflict a penalty for allowing contents of water-closet, etc., to overflow.
Power to abate these nuisances and recover expenses in a summary manner.
49. May prohibit accumulation of manure, filth, etc.
50. May direct periodical removal of manure, etc., and recover penalties in default.
66. May provide fire-plugs for assistance in case of fire.
112. May prohibit establishment of offensive trades.
113. May make byelaws as to offensive trades.
114 & 115. Duty of preventing nuisance from offensive trades within or without their district.
149. All streets being highways vested in.
150. Power to compel paving, metalling, lighting, etc., of private streets.
151. Exemption from expenses under last section.
152. Power to declare such streets public when so paved, etc.
153. Power to require gas and water pipes to be moved.
154. May purchase premises for improving streets.
155. Power to regulate line of building.
157. May make byelaws regulating all matters connected with new streets, new buildings, ventilation, and drainage of buildings.
158 & 159. Enforcement of above byelaws; control over new buildings.
160. Naming of new streets; improving line of streets; ruinous and dangerous buildings; precautions during construction; and repair of sewers, streets, and houses.
161. May contract for lighting district with gas.
May supply gas.
162. May purchase gas undertakings.
163. Superseding of Lighting and Watching Act, 1833.
164. May purchase, take, and regulate public pleasure-grounds.
165. May provide public clocks.
166—168. May provide or purchase public markets. (By the Public Health Act, 1908, rural district councils may, with the consent of the Local Government Board, exercise certain of these powers.)
169 & 170. May provide public slaughter-houses.
171. Provisions of Towns Police Clauses Acts incorporated:
as to obstructions and nuisances in streets.
,, fires.
,, places of public resort.
,, hackney carriages.
,, public bathing.
172. May make byelaws for licensing horses, boats, etc., for hire.
197. Urban authority to provide offices.

It appears from tables contained in the annual reports of the Local Government Board that the following enactments in the Public Health Act, 1875,

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have in recent years been put in force in rural districts by orders of the Board:—

Sects. 20, 25, 26, 39, 42 (so far as it relates to cleansing and watering of streets); 44 (second paragraph); 45, 47, 49, 50, 66, 112, 113, 114, 115, 149, 150 (except as to sewering); 151, 152, 153, 154, 155, 157, 158, 160, 161 (first paragraph); 163, 164, 165, 169 (second and third paragraphs); 170, 171 (various provisions); 172 (second paragraph).

The Public Health (Ireland) Act, 1896 (59 & 60 Vict. c. 54), contains a section similar to the section in the text.

Power of rural authority to form special drainage districts.

277. It shall be lawful for a rural authority, by resolution to be approved by the Local Government Board, but not otherwise, to constitute any portion of the area within their jurisdiction a special drainage district, for the purpose of charging thereon exclusively the expenses of works of sewerage, water supply or of other works, which by this Act are or by order of the Local Government Board may be declared to be special expenses, and thereupon such area shall become a separate contributory place.

As to what is a contributory place, see s. 229.

[The following note is substantially a reproduction of the note which appears in the last (7th) edition of Lumley's Public Health, Vol. I., by Mr. A. Macmorran, K.C., and the present editor of this work].

Practice of Local Government Board.

The Local Government Board state that, having regard to the fact that the Public Health Act, 1875, contemplates that in all ordinary cases the civil parish shall in rural districts be the area upon which special expenses incurred in respect of it shall be charged, it is contrary to their practice to approve of the constitution of a special drainage district under s. 277 of the Act, save in exceptional cases where the circumstances clearly point to the desirability of adopting such a course. In this connection the Board point out that when an area is formed into a special drainage district, it becomes a separate contributory place for all the purposes of the Public Health Act, and in view of this fact they require in such cases to be satisfied, *inter alia*, that both the area proposed to be formed into the special drainage district and the remainder of the civil parish are areas of such a nature as to be suitable for separate contributory places for the purposes of the Act.

Subject to the above conditions, the Board are prepared to consider applications for their approval of the constitution of a special drainage district in any case where it is proposed to carry out, for the sole benefit of the area comprised in the proposed special drainage district, sanitary works involving a large capital expenditure, but in such cases the Board only consider the application for their approval of the constitution of the district in connection with the application for their sanction to the raising of the loan required to defray the cost of the works.

An application to the Board in reference to a proposed special drainage district should be made in the following manner: The rural district council should proceed to pass a resolution constituting the district in terms and referring to a map showing its boundaries. An ordnance map on a scale of not less than six inches to a mile should be used for this purpose, and the boundary of the proposed special drainage district should be indicated by a continuous hard line of colour carefully drawn with a draughtsman's pen, the outside edge of the line of colour representing the precise boundary intended. The line should be drawn in such a manner as to prevent any doubt hereafter arising as to the inclusion or exclusion of any particular roads, premises, etc. A duplicate of the map should also be prepared; and each copy should be endorsed: "This is the map" (or "A duplicate of the map," as the case may be) referred to in the resolution passed by the rural district council of in the county of on the day of constituting the special drainage district. This endorsement should in each case be signed by the clerk to the rural district council, and both copies of the map should then be fowarded to the Board, accompanied by a copy of the resolution referred to. The Board should at the same time be furnished with particulars as to the area, population, and assessable value of the parish, and of the part of the parish which would be respectively within and without the special drainage district. A statement of the grounds upon which the rural district council consider the constitution of the special drainage district to be necessary or desirable should also be submitted.

Part of parish benefited by works. Rate on whole of parish.

Where a rural sanitary authority has, under the provisions of the Public Health Act, 1875, supplied water to part of a contributory place, the expenses both of supply and of maintenance must, so far as they cannot be defrayed by a reasonable water rate or water rent to be paid by the consumers, be raised as special expenses by a rate on the whole contributory place (*Horn* v. *Sleaford R. D. C.*, [1898] 2 Q. B. 358). In this case no special drainage district had been formed within the parish under s. 277 of the Public Health Act, 1875. The leading facts of the case are thus stated in the judgment of WILLS, J.: "The parish of Heckington is one of a group of parishes forming the rural district of Sleaford. Within the parish of Heckington, and forming perhaps a twentieth part of the area of the parish, is the village of Heckington. The district council have provided a supply of water for the village of Heckington, and in respect of the water supply they charge water rates. To provide the supply, however, they borrowed, on the security of the rates applicable to the purpose, a sum of £1,350 repayable with interest by instalments. To pay some instalments overdue, with interest, they have made a rate upon the whole of the parish of Heckington. The appellant who is rated in Heckington parish, but whose rateable property is two or three miles from the village, objects, and says that the whole of the expenses of providing the water supply ought to be paid out of the water rates payable by the consumers of water" (*ibid.*, at p. 363).

Special drainage districts for waterworks purposes.

Where application has been made to the Local Government Board for their approval of the constitution of special drainage districts for the purpose of charging thereon exclusively the cost of works of water supply, the Board have pointed out that by the exercise of the powers possessed by rural district councils of charging rates and rents for the supply of water under s. 56 of the Public Health Act, 1875, and s. 9 of the Public Health (Water) Act, 1878, the council may practically throw the cost of the works of water supply on the actual consumers of the water, and that in view of this fact it would not accord with the Board's practice to approve of the formation of such a district where the principal object in view was to limit the area to be charged with the cost of works of water supply.

Union of two parishes.

The Board have also stated that it would be contrary to their usual practice to approve of the formation of two rural parishes into a special drainage district, and they point out that if it is considered necessary that parishes should be amalgamated for all purposes, the matter should be brought before the county council with a view to action being taken under s. 57 of the Local Government Act, 1888 (51 & 52 Vict. c. 41). See s. 229 of the Public Health Act, 1875, as to the apportionment of the cost of works which are for the common benefit of two or more contributory places.

A special drainage district may, however, be set up for parts of two or more parishes, or for one whole parish and part of another.

Special drainage districts not to consist of houses only.

It is not intended that an alteration of this kind (*i.e.*, a constitution of a special drainage district) should be effected with the object of making that part of a parish or township which is occupied by houses only a separate contributory place, as express provision is made by s. 230 of the Public Health Act, 1875, for rating lands on a reduced assessment of one-fourth of the value, so that, while still forming part of the same rating area as the lands containing the nucleus of the population, they may not be subject to the full burden of the rates levied for special expenses.

Effect of constituting

The Local Government Board have stated that they do not consider that the formation of a special drainage district including part of a parish on

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mortgage of the rates of which a loan has been previously raised has any effect in the way of altering the incidence of the loan, which will remain chargeable upon the entire parish.

special drainage district upon loans.

They also stated that they have no power to issue an Order exempting the part of the parish which has been included in the special drainage district from liability to contribute towards the payment of principal and interest on a loan raised before its formation on the credit of the rates of the whole parish.

Special drainage districts cannot overlap sanitary districts.

There is no statutory authority for the formation of a special drainage district to include portions of districts of separate rural authorities. Those authorities may, however, combine for the execution of works. See s. 285, and also s. 57 of the Local Government Act, 1894.

Alteration of special drainage districts.

The section does not provide for an alteration of the boundaries of an existing special drainage district. It would seem, therefore, that the only method of effecting an alteration is to dissolve the district (by procedure under s. 270) and to constitute a new one.

As to the mode in which the expenses of a rural district council in respect of a special drainage district comprising parts of more than one parish should be levied, the Local Government Board have stated that the amount required by the rural district council should be apportioned between the portions of the drainage district in each parish according to the assessable value of each portion for the purposes of the special expenses rate, and that a separate precept should be addressed to each set of overseers requiring them to pay the sum thus apportioned. A separate rate would then, in pursuance of s. 230 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), be made and levied by the overseers of each parish over so much of the parish as is within the special drainage district.

A rural district council, unlike an urban council, have no power to divide their district, irrespective of parish boundaries, for *certain* purposes of the Act.

UNION OF DISTRICTS.

Formation of united district.

279. Where, on the application of the local authorities of any urban or rural districts, or of any such authorities, it appears to the Local Government Board that it would be for the advantage of such districts, or any of them, or any parts thereof, or of any contributory places in any rural district or districts, to be formed into a united district for all or any of the purposes following; (that is to say,)

(1.) The procuring a common supply of water; or

(2.) The making a main sewer or carrying into effect a system of sewerage for the use of all such districts or contributory places; or

(3.) For any other purposes of this Act;

the Local Government Board may by provisional order form such districts or contributory places into a united district.

All costs charges and expenses of and incidental to the formation of a united district shall, in the event of the united district being formed, be a first charge on the rates leviable in the united district in pursuance of this Act.

Sect. 280 provides for the governing body of the united district, and s. 281 makes detailed provisions as to the contents of the Order forming the district. Applications for Provisional Orders under s. 279 should be made in the manner indicated in "Provisional Order Instructions A" issued by the Board.

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The section does not give the Local Government Board the power to initiate proceedings for the formation of united districts. The action must, in the first instance, proceed from the authorities or some of them.

See s. 285, which provides that two or more local authorities may combine together for the purpose of executing and maintaining any works that may be for the benefit of their respective districts or any part thereof.

For an instance of the formation of a joint board for a united district under s. 279, see the Conway and Colwyn Bay Joint Water Supply District Provisional Order, 1891, confirmed by 54 & 55 Vict. c. ccxi. The following clauses of the Order may be particularly noticed:

> Art. XIII. The purposes for which the united district is formed are as follows:
>
> (a) For procuring a common supply of water for the constituent districts.
>
> (b) For the acquisition of such lands, waterworks, rights, powers, easements, or privileges, and the execution, maintenance, improvement, enlargement, and extension of such works, and the doing of any such acts as may be necessary and proper for collecting, impounding, storing, and conveying water for distribution by the several constituent authorities for public and private purposes, and generally for carrying into effect the purpose firstly hereinbefore mentioned, and any other purpose of this order or any purpose connected therewith or incidental thereto.
>
> Art. XIV.—(1.) From and after the first meeting of the joint board, all the powers, rights, duties, obligations, and liabilities of the constituent authorities, or any of them, under any agreements or arrangements which may have been entered into in connection with the procuring of a common supply of water, shall be transferred to and vested in the joint board.
>
> (2.) If within a period of two years from the commencement of this order, the joint board shall have failed to carry out and perform the purposes for which the united district is formed, they shall be deemed to be a local authority in default under s. 299 of the Public Health Act, 1875.

An interesting case arose out of the formation of this joint board as to the liability of the constituent authorities for maintenance of a water main supplying portions of the district (see *Colwyn Bay and Colwyn U. D. C.* v. *Conway R. D. C.*, Journal of Gas Lighting, August 12th, 1902, p. 407, and July 14th, 1903, p. 119).

See also the INTRODUCTION at p. 34 for other instances of joint boards.

Orders as to costs of inquiries.

294. The Local Government Board may make orders as to the costs of inquiries or proceedings instituted by, or of appeals to the said Board, under this Act, and as to the parties by whom or the rates out of which such costs shall be borne; and every such order may be made a rule of one of the superior courts of law on the application of any person named therein.

This section is applied to London by the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 129.

Of late a special section on the subject of costs of inquiries is frequently to be found in the Acts of municipal authorities. See, *e.g.*, Rickmansworth Gas Act, 1903 (3 Edw. 7, c. 36), s. 63; Shepshed U. D. C. Gas Act, 1903 (3 Edw. 7, c. xl.), s. 59; Pontypridd U. D. C. Act, 1903 (3 Edw. 7, c. 115), s. 53; Nantwich U. D. C. Gas Act, 1903 (3 Edw. 7, c. civ.), s. 146. The following is the usual form:

Inquiries by Local

> (1) The Local Government Board may direct any inquiries to be held by their inspectors which they may deem necessary in regard to

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the exercise of any powers conferred upon them or the giving of any consents under this Act and the inspectors of the Local Government Board shall for the purpose of any such inquiry have all such powers as they have for the purposes of inquiries directed by that Board under the Public Health Act, 1875.

(2) The Council shall pay to the Local Government Board any expenses incurred by that Board in relation to any inquiries referred to in this section including the expenses of any witnesses summoned by the inspector holding the inquiry, and a sum to be fixed by that Board not exceeding three guineas a day for the services of such inspector.

PROVISIONAL ORDERS BY BOARD.

As to provisional orders made by Local Government Board.

297. With respect to provisional orders authorised to be made by the Local Government Board under this Act, the following enactments shall be made:

(1.) The Local Government Board shall not make any provisional order under this Act unless public notice of the purport of the proposed order has been previously given by advertisement in two successive weeks in some local newspaper circulating in the district to which such provisional order relates:

(2.) Before making any such provisional order, the Local Government Board shall consider any objections which may be made thereto by any persons affected thereby, and in cases where the subject matter is one to which a local inquiry is applicable, shall cause to be made a local inquiry, of which public notice shall be given in manner aforesaid, and at which all persons interested shall be permitted to attend and make objections:

(3.) The Local Government Board may submit to Parliament for confirmation any provisional order made by it in pursuance of this Act, but any such order shall be of no force whatever unless and until it is confirmed by Parliament:

(4). If while the bill confirming any such order is pending in either House of Parliament, a petition is presented against any order comprised therein, the bill, so far as it relates to such order, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of private bills:

(5). Any Act confirming any provisional order made in pursuance of any of the Sanitary Acts or of this Act, and any order in council made in pursuance of any of the Sanitary Acts, may be repealed altered or amended by any provisional order made by the Local Government Board and confirmed by Parliament:

(6.) The Local Government Board may revoke, either wholly or partially, any provisional order made by them before the same is confirmed by Parliament, but such revocation shall not be made whilst the bill confirming the order is pending in either House of Parliament:

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(7.) The making of a provisional order shall be primâ facie evidence that all the requirements of this Act in respect of proceedings required to be taken previously to the making of such provisional order have been complied with:

(8.) Every Act confirming any such provisional order shall be deemed to be a public general Act.

The Local Government Board issue very carefully drawn instructions for the guidance of urban and rural authorities desirous of making application for provisional orders. These instructions will be found *post*, p. 937. By Standing Order 193 (a) of the House of Commons no bill originating in that House for confirming a provisional order shall be read the first time after Whitsuntide.

When the confirming Act is introduced into Parliament, persons feeling themselves aggrieved may petition against and oppose the same, as in the case of ordinary private bills.

Standing Orders 89, 151, and 208a provide as follows:

> (89) The referees shall decide upon all petitions against private bills, or against provisional orders or provisional certificates, as to the rights of the petitioners to be heard upon such petitions, without prejudice, however, to the power of the Select Committee to which the Bill is referred to decide upon any question as to such rights arising incidentally in the course of their proceedings.
>
> (151.) Whenever the House shall order that any bill for confirming a provisional order, or a provisional certificate be referred to the Committee of Selection with respect to any order or certificate to be confirmed thereby, the proceedings of the Select Committee to which the bill is referred, and of the referees, shall be conducted in like manner as in the case of private bills, and shall be subject to the same rules and orders of the House so far as they are applicable, except those which relate to the payment of fees by the promoters of such provisional order or certificate.
>
> (208a.) Every bill for confirming provisional orders or provisional certificates shall, after the second reading, stand referred to the Committee of Selection, or to the General Committee on Railway and Canal Bills, as the case may require, and be subject to the standing orders regulating the proceedings upon private bills, so far as they are applicable; Provided that, when any order or certificate contained in any such bill is opposed, the Committee to whom such opposed order or certificate is referred shall consider all the orders or certificates comprised in such bill "and may, if they think fit, divide the bill into two bills, dealing with the opposed and unopposed orders or certificates respectively, and report the same separately."

Committees are appointed, and the proceedings are conducted in the same way as in ordinary opposed private bills. The standing orders require, that whenever plans, sections, or books of reference are deposited in the case of an application to any public department for a provisional order, duplicates of such documents shall, at the same time, be deposited in the private bill office and in the office of the clerk of the Parliaments; provided that, with regard to such deposits as are so made at any public department after the prorogation of Parliament, and before the 30th day of November in any year, such duplicates shall be so deposited on the 30th day of November.

By Standing Order 226 of the House of Commons it is provided, that "this house will not insist on its privileges with regard to any clauses in private bills, or in bills to confirm any provisional orders or provisional certificates sent down from the House of Lords which refer to tolls and charges for services performed, and are not in the nature of a tax, or which refer to rates assessed and levied by local authorities for local purposes."

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A provisional order cannot be quashed on *certiorari* (*R.* v. *Frewin or Hastings Local Board* (1865), 6 B. & S. 401; *In re Local Government Board, Ex parte Kingstown Commissioners* (1886), 18 L. R. Ir. 509; *R.* v. *Enniskillen Urban District Council*, [1902] 2 I. R. 452). In the *Kingstown Commissioners Case, supra*, it was held that the Local Government Board in exercising its functions as to provisional orders is not a court, nor are purely legislative powers, or powers of promoting legislation, on principle, subject to prohibition; but an usurpation of jurisdiction of a judicial character might be prohibited. But the Chancery Division by injunction will restrain a local board from prosecuting an application for a provisional order when the application is contrary to equity, and will not drive the applicant to petition Parliament against the bill (*Telford* v. *Metropolitan Board of Works* (1872), L. R. 13 Eq. 574).

As most provisional orders are made for the benefit of some particular locality and are not framed by the Local Government Board spontaneously, if opposition be made to the order, its defence before the Committee is left to the promoters of the proposition contained in the order; at the same time, the Board reserve a power of withdrawing any order from the bill, if this seems to them to be expedient pending its passage through Parliament.

33 & 34 Vict. c. 1 gave power to the Select Committee of either House of Parliament, to whom bills confirming provisional orders are referred, to award costs under 28 Vict. c. 27, and to examine witnesses on oath as under 22 Vict. c. 78. It was repealed by 34 & 35 Vict. c. 3, but re-enacted with a slight addition not affecting these orders. That statute is still in force as to costs, but has been repealed as to the power to examine witnesses upon oath by 34 & 35 Vict. c. 83, which gives a general power to any Committee to examine witnesses on oath.

It is the practice of the Local Government Board to insert in the body of the bill to confirm an order clauses which alter the general law in respect of the district to which any provisional order relates, where the order renders some alteration necessary, or some special privilege, exemption, or requirement expedient. But such provision must arise out of the order or be connected with it. The Board will not propose extraneous alterations of the law in a confirming bill.

Though Acts confirming provisional orders are public general Acts, they are now printed with the local Acts in the authorised edition of the statutes.

See further as to provisional orders the notes to the Gas and Water Works Facilities Acts, *ante*, pp. 787 *et seq.*, and the note under s. 176 of the Public Health Act, 1875, *ante*, p. 883.

See s. 303 of the Public Health Act, 1875, *post*, p. 905, as to the power of the Local Government Board in relation to the alteration of local Acts.

Costs of provisional orders.

298. The reasonable costs of any local authority in respect of provisional orders made in pursuance of this Act, and of the inquiry preliminary thereto, as sanctioned by the Local Government Board, whether in promoting or opposing the same, shall be deemed to be expenses properly incurred for purposes of this Act by the local authority interested in or affected by such provisional orders, and such costs shall be paid accordingly; and if thought expedient by the Local Government Board, the local authority may contract a loan for the purpose of defraying such costs.

The Borough Funds Acts, 1872 (35 & 36 Vict. c. 91) and 1903 (3 Edw. 7, c. 14), relate exclusively to local and personal bills. Sect. 297 (8), *supra*, provides that every Act confirming a provisional order shall be deemed to be a public general Act. The requirements of the Borough Funds Acts do not, therefore, apply thereto. It is to the section in the text that local authorities must look for authority to defray the expenses of promoting or opposing provisional orders. It is the practice of the Local Government Board to require that such costs shall be taxed by the taxing officer of one of the Houses of Parliament. It is not necessary, therefore, to submit such costs for taxation by the clerk of the peace. As to scale on which costs will be taxed, see House of Commons Costs Taxation Acts, 1847 and 1879 (10 & 11 Vict. c. 69 and 42 & 43 Vict. c. 17), and House of Lords Costs Taxation Act, 1849 (12 & 13 Vict. c. 78).

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The section in the text applies when the expenses incurred have not resulted in the issue of a provisional order. It does not apply to provisional orders under the Gas and Water Works Facilities Acts.

POWER OF BOARD TO ENFORCE PERFORMANCE OF DUTY BY DEFAULTING LOCAL AUTHORITY.

Proceedings on complaint to Board of default of local authority.

299. Where complaint is made to the Local Government Board that a local authority has made default in providing their district with sufficient sewers, or in the maintenance of existing sewers, or in providing their district with a supply of water, in cases where danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply of water, and a proper supply can be got at a reasonable cost, or that a local authority has made default in enforcing any provisions of this Act which it is their duty to enforce, the Local Government Board, if satisfied, after due inquiry, that the authority has been guilty of the alleged default, shall make an order limiting a time for the performance of their duty in the matter of such complaint. If such duty is not performed by the time limited in the order, such order may be enforced by writ of mandamus, or the Local Government Board may appoint some person to perform such duty, and shall by order direct that the expenses of performing the same, together with a reasonable remuneration to the person appointed for superintending such performance, and amounting to a sum specified in the order, together with the costs of the proceedings, shall be paid by the authority in default; and any order made for the payment of such expenses and costs may be removed into the Court of Queen's Bench, and be enforced in the same manner as if the same were an order of such court.

Any person appointed under this section to perform the duty of a defaulting local authority shall, in the performance and for the purpose of such duty, be invested with all the powers of such authority other than (save as herein-after provided) the powers of levying rates; and the Local Government Board may from time to time by order change any person so appointed.

[The following note is substantially a reproduction of the note under this section contained in the last (7th) edition of Lumley's Public Health, Vol. I., by Mr. A. Macmorran, K.C., and the present editor of this work.]

Other statutory provisions.

See also s. 19 (2) of the Local Government Act, 1888, as to representations to the Board by county councils that a district council have failed to properly put in force the Public Health Act, 1875, or that any other matter affecting the public health of a district requires to be remedied; also s. 16 of the Local Government Act, 1894, as to complaints by parish councils to *the county council*, of the default of rural district councils, in the matter of sewers, water supply, the enforcement of the Public Health Act, or highway maintenance.

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By an unrepealed provision in the Housing of the Working Classes Act, 1885 (s. 7), it is made the duty of every local authority entrusted with the execution of the laws relating to public health and local government to put in force from time to time, as occasion may arise, the powers with which they are invested, so as to secure the proper sanitary condition of all premises within the area under their control.

Meaning of "district."

The complaint need not relate to the district as a whole, though the Local Government Board cannot be expected to make an order unless an appreciable part of the district is concerned. In the case of the city of Rochester [1892] in which both the complaint and order referred to "the village of Borstal," it was held by the court that the portion of the city thus described was sufficiently defined and well known, and that the order should be enforced by *mandamus* (Times, November 22nd, 1892; Local Government Chronicle, 1892, p. 1015).

Remedy under section is exclusive.

Where the remedy under this section is applicable, no action for damages will lie at the suit of a private person. See *Robinson* v. *Workington Corporation*, [1897] 1 Q. B. 619; *Pasmore* v. *Oswaldtwistle U. D. C.*, [1898] A. C. 387; *Dent* v. *Bournemouth Corporation* (1897), 66 L. J. Q. B. 395; *Jones* v. *Barking U. D. C.*, Times, December 9th, 1898; and *Harrington* (*Earl of*) v. *Derby Corporation*, [1905] 1 Ch. 205. The duty as to cleansing sewers imposed by s. 19 of the Act is not one in respect of which complaint may be made to the Local Government Board, and, therefore, an action will lie in respect of a neglect of that duty (see *Baron* v. *Portslade-by-Sea U. D. C.*, [1900] 2 Q. B. 588). In a recent case an injunction was claimed to restrain a local authority from managing a sewage farm in such a way as to cause a nuisance to the plaintiff, and claiming damages. The defendants contended that the action would not lie by reason of this section; but this contention was overruled (*Hewinson* v. *Cheltenham R. D. C.* (1903), 25 M. C. C. 403; Times, July 8th, 1903).

Complaint as to water supply.

A complaint under the present section in regard to water supply must allege that the district council have made default in providing their district (or part thereof) with a supply of water, that danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply, and that a proper supply can be got at a reasonable cost.

Before directing a local inquiry in such cases the Local Government Board require a definite assurance from complainants that they are prepared with adequate evidence to support the complaint, including proof that the use of the source or sources of supply suggested, together with all necessary rights, can be obtained by the local authority under the Act. Evidence is also required that the water obtainable from the source suggested is sufficient in quantity and of good quality, that the supply is likely to be permanent, and that the cost of providing and distributing the water would be reasonable.

In the case of a district which is within the statutory limits of a water company, it would seem that the section is inoperative so long as the company are able and willing to afford a supply. See s. 52 and notes thereto.

See also the provisions of the Public Health (Water) Act, 1878, ss. 3 *et seq.*, *post*, pp. 918 *et seq.*

Complaint as to non-enforcement of Act.

The Local Government Board have stated that they are advised that the words "default in enforcing any provisions of this Act" do not apply to duties which the local authority ought to themselves perform, but only to those which they ought to require others to perform. In the case of a complaint that a local authority had failed to take steps under the Act to secure the abatement of a nuisance, the Board stated that even if it could be contended that the section was literally applicable, there were practical difficulties in taking effectual proceedings thereunder as the powers of the section, and the action contemplated by it, were unsuitable for the purposes in view.

The Local Government Board do not apparently regard the section as applicable to such matters as the non-enforcement of byelaws by a local authority, the provision of privies, the making up of private streets, the levying of water rates, or the provision of hydrants. Practically, therefore, it would seem that the operation of the section is confined to cases of the default of local authorities in the matter of sewerage and water supply.

This order is in itself binding and conclusive. See s. 295. It must be directed to and served upon the defaulting authority. But the obtaining of such an order does not prevent the person, who has obtained it for the purpose of putting an end to a nuisance, from proceeding by action for an injunction to restrain the continuance of such nuisance (*Whitefield* v. *Newquay Local Board*, Law Times, March 18th, 1882).

It has been decided that a refusal by the Board to make an order may be considered by the court sufficient to justify their refusing a *mandamus* if a complainant applies directly for the writ (*R.* v. *Tottenham Local Board* (1893), 9 T. L. R. 414); but according to the decision of the House of Lords in *Pasmore* v. *Oswaldtwistle U. D. C.*, *ante*, p. 902, a complainant cannot go to the court at all.

There have been many cases in which a writ of *mandamns* has been obtained by the Board. Upon an application for a writ, the court will not inquire whether there has been a due inquiry under this section. The court is bound to grant the writ at the request of the Board, unless there has been some legal error or some omission to apply the ordinary legal procedure (*R.* v. *Staines Union and Staines Local Board* (1893), 58 J. P. 182). The writ against the Staines Local Board was afterwards made peremptory, notwithstanding a return that the local board required time to prepare a scheme and estimate for obtaining the necessary funds (*R.* v. *Staines Local Board*, Times, February 27th, 1894). A fresh *mandamus* was asked for after the passing of the Local Government Act, 1894, against the successors of the Staines Local Board, and the rule for it was eventually made absolute. See *R.* v. *Sunbury-on-Thames U. D. C.*, Times, June 4th and July 20th, 1896; 18 M. C. C. 309, 408.

Upon application of the Local Government Board a peremptory writ of *mandamus* had issued to the Worcester Corporation requiring the execution of certain sewage works. The writ being disobeyed, writs of attachment of certain members of the council were ordered to issue, but to lie in the office for a specified period. This period had been extended from time to time. The corporation afterwards applied to the court that, having satisfied the Local Government Board that the sewage works were in process of execution with due diligence, the time should be still further extended. The court, being satisfied that the work was being diligently carried on, ordered the writs to remain in the office for an unspecified period, the matter to stand over generally with liberty to apply (*R.* v. *Worcester Corporation* (1905), 69 J. P. 296).

With regard to the alternative procedure open to the Local Government Board under the section,—that of appointing some person to perform the duty—this is never adopted by them. The Board have stated that they have found it practically impossible to perform the duty of a defaulting authority by means of some other person, and that it is not for them as the central authority to descend into the arena of local difficulties and to undertake to do for a defaulting authority that which the statute clearly imposes on the latter to do.

Under the corresponding enactment in 29 & 30 Vict. c. 90, s. 49, an order was made that "the said authority do its duty, and begin to set about the works for the purpose within one month from the date of this order, and proceed therewith until completion." After the month, the authority having done nothing, a second order was made appointing J. B. to perform the said duty of the authority as he should be directed. It was held that the two orders were justified by the section (*R.* v. *Cockerell* (1871), L. R. 6 Q. B. 252). It was also held that it was not necessary to provide for the expenses in the latter order.

As to the enforcing of the order, see 1 & 2 Vict. c. 110, s. 18, and the Rules of the Supreme Court, Order 42, rule 31, which enables an order against a

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For enactments intended to give a remedy similar to that of s. 299, see as to Scotland, the Public Health (Scotland) Act, 1897 (60 & 61 Vict. c. 38), s. 146, and as to Ireland, the Public Health (Ireland) Act, 1896 (59 & 60 Vict. c. 54), s. 15.

Further provision for recovery of expenses.

300. Any sum specified in an order of the Local Government Board for payment of the expenses of performing the duty of a defaulting local authority, together with the costs of the proceedings, shall be deemed to be expenses properly incurred by such authority, and to be a debt due from such authority, and payable out of any moneys in the hands of such authority or of their officers, or out of any rate applicable to the payment of any expenses properly incurred by such authority, which rate is in this part of this Act referred to as "the local rate." If the defaulting authority refuses to pay any such sum, with costs, as aforesaid, for a period of fourteen days after demand, the Local Government Board may by order empower any person to levy, by and out of the local rate, such sum (the amount to be specified in the order) as may, in the opinion of the Local Government Board, be sufficient to defray the debt so due from the defaulting authority, and all expenses incurred in consequence of the non-payment of such debt.

Any person or persons so empowered shall have the same powers of levying the local rate, and requiring all officers of the defaulting authority to pay over any moneys in their hands, as the defaulting authority would have in the case of expenses legally payable out of a local rate to be raised by such authority; and the said person or persons, after repaying all sums of money so due in respect of the order, shall pay the surplus, if any, (the amount to be ascertained by the Local Government Board), to or to the order of the defaulting authority.

See note under s. 299, *supra*.

Power of Board to borrow to defray expenses of performing duty of defaulting authority.

301. The Local Government Board may from time to time certify the amount of expenses that have been incurred, or an estimate of the expenses about to be incurred, by any person appointed by the said Board under this Act to perform the duty of a defaulting local authority; also, the amount of any loan required to be raised for the purpose of defraying any expenses that have been so incurred, or are estimated as about to be incurred; and the certificate of the said Board shall be conclusive as to all matters to which it relates.

Whenever the Local Government Board so certifies a loan to be required, the Public Works Loan Commissioners may advance to the Local Government Board, or to any person appointed as aforesaid, the amount of the loan so certified to be required on the security of the local rate, without requiring any other security; and the Local Government Board, or the person so appointed, may, by any instrument duly executed, charge the local rate with the repayment of the principal and interest due in respect of such loan, and every such charge shall have the same effect as if the defaulting local authority were empowered to raise such loan on the security of the local rate and had duly executed an instrument charging the same on the local rate.

See note under s. 299, *supra.*

Recovery of principal and interest.

302. Any principal money or interest for the time being due in respect of any loan under this Act made for payment of the expenses incurred or to be incurred in the performance of the duty of a defaulting local authority shall be taken to be a debt due from such authority, and, in addition to any other remedies, may be recovered in the manner in which a debt due from a defaulting authority may be recovered in pursuance of the provisions of this part of this Act.

The surplus (if any) of any such loan, after payment of the expenses aforesaid, shall, on the amount thereof being certified by the Local Government Board, be paid to or to the order of the defaulting authority.

"Expenses," for the purposes of the provisions of this part of this Act relating to defaulting local authorities, shall include all sums payable under those provisions by or by the order of the Local Government Board, or the person appointed by that Board.

See note under s. 299, *supra.*

Powers of Board in relation to Local Acts, etc.

Power to repeal and alter local Acts.

303. The Local Government Board may, on the application of the local authority of any district, by Provisional Order, wholly or partially repeal alter or amend any local Act, other than an Act for the conservancy of rivers, which is in force in any area comprising the whole or part of any such district, and not conferring powers or privileges on any persons or person for their or his own pecuniary benefit, which relates to the same subject matters as this Act.

Any such Provisional Order may provide for the extension of the provisions of the local Act referred to therein beyond the district or districts within the limits of such Act, or for the exclusion of the whole or a portion of any such district from the application of such Act; and may provide what local authority shall have jurisdiction for the purposes of this Act in any area which is by such Order included in or excluded from such district.

See also s. 59 of the Local Government Act, 1888, which provides that any scheme or order under that Act may extend to any altered area the provisions of any local Act.

A further power of amending local Acts may (on the application of a local authority for an order declaring any part of this Act or any section thereof to be in force in their district) be exercised by the Local Government Board on declaring any part or section of the Public Health Acts Amendment Act, 1907, to be in force. See s. 3 (1). It is somewhat difficult to reconcile the provision in that sub-section with s. 11 of the same Act, for if any inconsistent section be repealed under s. 3 (1), it is difficult to put a meaning to the provision in s. 11 that powers given under the Act shall not be in derogation of any other power conferred by any Act.

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Printed instructions are annually issued by the Local Government Board as to applications for provisional orders under this section.

Under this section gas limits and water limits fixed by local Acts may be extended. When such limits are fixed by a provisional order made under the Gas and Waterworks Facilities Acts, 1870 and 1873, the last mentioned Act, by s. 12, expressly gives power to revoke, amend, extend, or vary such provisional order, see p. 804, *ante.*

As to the acquisition of lands for the purposes of a local Act, see the note to s. 176. The law officers of the Crown advised that the corresponding provision in 35 & 36 Vict. c. 79, s. 33, enabled a local Act to be altered in provisions not within the purview of the sanitary Acts, if it were brought within the operation of the section at all. Several provisional orders have been framed accordingly, and have been confirmed by Parliament. But there is no general power conferred upon the Board to alter any local Act which relates to local matters.

The Local Government Board hold that they have no power to alter a local Act so as to give compulsory powers for the purchase of land for the purposes of this Act or extend the time fixed by this Act within which compulsory powers shall be exercised. Such powers should therefore be sought by Bill.

The provision excluding Acts for the conservancy of rivers appears to signify an Act exclusively providing for the conservancy of a river, so that when the Act providing for the conservancy of a river, and also for other matters, subjects of this Act, application may be made with reference to the latter matters.

By the words "or part of any such district" the provision in previous Acts has been extended. That was confined to a local Act in force in a district co-extensive with the sanitary district. But now a local Act will be brought within the operation of this section, though it applies to a much larger or a much less area than that of the sanitary district.

See also the INTRODUCTION at p. 73, *ante.*

Settlement of differences arising out of transfer of powers or property to local authority.

304. On the application of any authority from whom or to whom any powers rights duties capacities liabilities obligations and property, or any of them, are at any time transferred or alleged or claimed to be transferred in pursuance of this Act, or any Provisional Order made thereunder, or on the application of any person affected by such transfer, the Local Government Board may by order settle any doubt or difference, and adjust any accounts arising out of or incidental to such powers rights duties capacities liabilities obligations or property, or to the transfer thereof, and direct the parties by whom and to whom any moneys found to be due are to be paid, and the mode of raising such moneys; and any provisions contained in any Order so made shall be deemed to have been made in pursuance of and to be within the powers conferred by this section, subject to this proviso, that where any such Order directs any rate to be made, or other act or thing to be done, which the party required to make or do would not, apart from the provisions of this Act, have been enabled to make or do by law, such Order shall be provisional only until it has been confirmed by Parliament.

Any settlement or adjustment under this section may be included in any Provisional Order which gives rise to the same.

Entry on lands for

305. Whenever it becomes necessary for a local authority or any of their officers to enter examine or lay open any lands or premises

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purposes of Act.

for the purpose of making plans surveying measuring taking levels making keeping in repair or examining works, ascertaining the course of sewers or drains, or ascertaining or fixing boundaries, and the owner or occupier of such lands or premises refuses to permit the same to be entered upon examined or laid open for the purposes aforesaid or any of them, the local authority may, after written notice to such owner or occupier, apply to a court of summary jurisdiction for an order authorising the local authority to enter examine and lay open the said lands and premises for the purposes aforesaid or any of them.

If no sufficient cause is shown against the application the court may make an order accordingly, and on such order being made the local authority or any of their officers may, at all reasonable times between the hours of nine in the forenoon and six in the afternoon, enter examine or lay open the lands or premises mentioned in such order, for such of the said purposes as are therein specified, without being subject to any action or molestation for so doing: Provided that, except in case of emergency, no entry shall be made or works commenced under this section unless at least twenty-four hours' notice of the intended entry, and of the object thereof, be given to the occupier of the premises intended to be entered.

Access to water meters may be obtained under s. 58, *ante*, p. 865, and entry for inspection of water supply in rural districts may be obtained under s. 7 of the Public Health (Water) Act, 1878.

Purposes of entry.

Sect. 305, *supra*, does not enable a local authority to obtain an order in the case of an owner's refusal to permit an entry for the purpose of proceedings taken under s. 16, *ante*, p. 856, to lay a sewer through private lands (*Lamacraft* v. *St. Thomas Rural Sanitary Authority* (1880), 44 J. P. 441). In *Wheatcroft* v. *Matlock Local Board* (1885), 52 L. T. (N.S.) 356, DENMAN, J., thought that the section would not apply where a landowner had refused permission to a local authority to enter his land for the purpose of covering in or otherwise improving a sewer under ss. 18 and 19. In *Robinson* v. *Sunderland Corporation*, *infra*, CHANNELL, J., expressed the opinion that the words "for the purpose of doing works which they have statutory authority to do" may be read into s. 305, but the attention of the court was not called to *Wheatcroft* v. *Matlock Local Board*, *supra*, or to *Lamacraft* v. *St. Thomas Rural Sanitary Authority*, *supra*.

Powers of justices on hearing of application: statement of case by them.

With regard to "sufficient cause," it should be observed that it has been held, on an application by a local authority for an order under this section in consequence of default having been made in compliance with a notice under s. 36 of the Public Health Act, 1875, and permission to enter having been refused, that the justices have no jurisdiction to review the notice or to receive evidence on the part of the owner as to the sufficiency of the existing sanitary arrangements (*Robinson* v. *Sunderland Corporation* (No. 2), [1899] 1 Q. B. 751). They might, however, inquire into the regularity of any necessary preliminary notices or as to compliance with any necessary condition precedent, and otherwise whether the case is a proper one in which to make an order (*ib.*; and see *Vines* v. *North London Collegiate School* (1899), 63 J. P. 244, and *Wimbledon Urban District Council* v. *Hastings* (1902), 67 J. P. 45). In a case decided before the passing of the Summary Jurisdiction Act, 1879, it was held that justices had no power to state a case on refusing to make such an order, in that there was no determination of a complaint within 20 & 21 Vict. c. 43, s. 2 (*Diss Urban Sanitary Authority* v. *Aldrich* (1877), 2 Q. B. D. 179). But if they make an order, and any question is raised as to its being in excess of jurisdiction, it would seem that a case might be stated under the Summary Jurisdiction Act, 1879 (42 & 43 Vict.

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c. 49), s. 33. See *Robinson* v. *Sunderland Corporation, supra,* where justices had made such an order, and a case was stated and argued without any objection being taken. It may also be that, under the Summary Jurisdiction Act, 1879, there is power to state a case if justices decide to make no order. See hereon *Sandgate Local Board* v. *Pledge* (1885), 14 Q. B. D. 730.

Penalty on obstructing execution of Act.

306. Any person who wilfully obstructs any member of the local authority, or any person duly employed in the execution of this Act, or who destroys pulls down injures or defaces any board on which any byelaw notice or other matter is inscribed, shall, if the same was put up by authority of the Local Government Board or of the local authority, be liable for every such offence to a penalty not exceeding five pounds.

Where the occupier of any premises prevents the owner thereof from obeying or carrying into effect any provisions of this Act, any justice to whom application is made in this behalf shall, by order in writing, require such occupier to permit the execution of any works required to be executed, provided that the same appear to such justice to be necessary for the purpose of obeying or carrying into effect the provisions of this Act; and if within twenty-four hours after the making of the order such occupier fails to comply therewith, he shall be liable to a penalty not exceeding five pounds for every day during the continuance of such non-compliance.

If the occupier of any premises when requested by or on behalf of the local authority to state the name of the owner of the premises occupied by him, refuses or wilfully omits to disclose or wilfully mis-states the same, he shall (unless he shows cause to the satisfaction of the court for his refusal) be liable to a penalty not exceeding five pounds.

Where the Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59), has been adopted, the above section extends to advertisements, placards, notices, etc., under that Act.

Wilful obstruction need not amount to actual physical violence (*Borrow* v. *Howland* (1896), 60 J. P. 391; *Bastable* v. *Little*, [1907] 1 K. B. 59, *per* Lord ALVERSTONE; *Betts* v. *Stevens*, [1910] 1 K. B. 1).

A notice having been served by an urban district council upon the owner of premises requiring him to abate a nuisance thereon, certain members of the council went to the premises, and, without the permission of the owner, some of them entered the premises to make an inspection, the rest remaining outside. The owner thereupon locked the door of the premises, thus preventing the members who were outside from entering, and those who were inside from getting out. Upon an information charging the owner with having wilfully obstructed the members in the execution of the Public Health Act, 1875, it was held that the members had no power under s. 102 of the Act to enter premises except by permission of the owner, or by an order of a magistrate, and that therefore they were not lawfully there, and the owner was not guilty of obstructing them in the performance of their duty (*Consett U. D. C.* v. *Crawford*, [1903] 2 K. B. 183).

Penalty on damaging works, etc. of local authority.

307. Any person who wilfully damages any works or property belonging to any local authority shall, in cases where no other penalty is provided by this Act, be liable to a penalty not exceeding five pounds.

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Compensation in case of damage by local authority.

308. Where any person sustains any damage by reason of the exercise of any of the powers of this Act, in relation to any matter as to which he is not himself in default, full compensation shall be made to such person by the local authority exercising such powers; and any dispute as to the fact of damage or amount of compensation shall be settled by arbitration in manner provided by this Act, or if the compensation claimed does not exceed the sum of twenty pounds, the same may at the option of either party be ascertained by and recovered before a court of summary jurisdiction.

"Drainage."

[The following note is, largely, a reproduction of the note under s. 308 in the last (7th) edition of Lumley's Public Health, Vol. I., by Mr. A. Macmorran, K.C., and the present editor of this work.]

The damage referred to in this section must be such as would be actionable but for the Act of Parliament (*Hall* v. *Bristol Corporation* (1867), L. R. 2 C. P. 322; *Rhodes* v. *Airedale Drainage Commissioners* (1876), 1 C. P. D. 402; *Cessford* v. *Dover Harbour Board*, Times, April 2nd, 1898).

Nature of claim for and circumstances under which compensation can be claimed.

A local authority laid certain sewers through the claimant's land and paid compensation in respect thereof. The local authority then proceeded to construct on neighbouring land, not belonging to the claimant, a pumping station, reservoir, and outfall sewer, which, together with the sewers laid through the claimant's land, were intended to form one system of sewage works. The claimant claimed compensation for damage caused to his land by the construction of the works on the neighbouring land. It was held that as the works were not being constructed on land belonging to the claimant, he was not entitled to recover compensation, although such works formed one system with and were connected with the sewers laid through the claimant's land (*Horton* v. *Colwyn Bay and Colwyn U. D. C.*, [1907] 1 K. B. 14; affirmed on appeal, [1908] 1 K. B. 327). See also *R.* v. *Mountford*, [1906] 2 K. B. 814; and compare *In re An Arbitration between London and North Western Rail. Co. and Reddaway* (1907), 71 J. P. 150.

Where a justice refused to condemn as unwholesome meat seized under s. 116, it was held that the owner was entitled to include in the amount of full compensation recoverable by him under this section from the local authority the costs incurred through the attendance of himself and his witnesses before the justice (*Re Buter and Birkenhead Corporation*), [1893] 2 Q. B. 77). In the subsequent case of *In re Davies and Rhondda U. D. C.* (1899), 80 L. T. (N. S.) 696, it was held that the costs of successfully defending a prosecution for exposing for sale unsound meat, which meat is the subject of the claim for compensation, cannot be recovered as damages upon an arbitration under s. 308. But in a later case decided by the Court of Appeal it was held that where meat has been condemned and destroyed, and the owner claims compensation, the arbitrator has jurisdiction to decide whether the meat was in fact sound, and to award as part of the compensation, the expenses incurred by the claimant in proceedings before the justices (*Walshaw* v. *Brighouse Corporation*, [1899] 2 Q. B. 286; compare *Holbs* v. *Winchester Corporation*, [1910] 2 K. B. 471, where a person claiming compensation was held to be himself in default).

A court of summary jurisdiction made an order, under s. 96 of the Public Health Act, 1875, upon the owner of premises to comply with a notice served upon him by the local authority requiring him to abate a nuisance upon the premises. The court of quarter sessions dismissed an appeal against the order, but stated a case. The High Court ordered that the order of quarter sessions should be quashed, and that instead thereof judgment should be entered for the owner, and that the local authority should pay to the owner the costs of the two appeals. These costs were taxed, and paid to the owner by the local authority. The expenses incurred by the owner in promoting the appeals exceeded the costs so paid to him. All the expenses incurred by the owner throughout the proceedings were reasonably and properly incurred:—*Held*,

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that the owner's expenses of the proceedings in the court of summary jurisdiction, and the difference between his costs taxed as between party and party and his actual expenses of the two appeals, were not damage for which he was entitled to compensation under s. 308 of the Act (*Barnett* v. *Eccles Corporation*, [1900] 2 Q. B. 423).

A local board gave notice to pave and level a street under the section of the Act of 1848 corresponding to s. 150. In default of the owner they did the work themselves, and in so doing they altered the level of the street so that the access to a house was rendered difficult and dangerous. It was held that though the owner might be liable to pay his proportion of the expenses, he was entitled to compensation for the special damage he had sustained (*R.* v. *Wallasey Local Board* (1869), L. R. 4 Q. B. 351). Where the footpath of a street which was a highway and also a turnpike road within the district of a local board was altered by them under an agreement with the turnpike trustees, so as to raise the level of the footpath in front of the house of the plaintiff and caused him damage, it was held that the street was not, by reason of its being a turnpike road, excluded by the interpretation clause from the operation of the section giving the board power to alter the street; and that as they were exercising powers given by the Act, the plaintiff was entitled to compensation (*Nutter* v. *Accrington Local Board* (1878), 4 Q. B. D. 375). In a subsequent case, where there had been a subsidence of a road in front of certain houses and the houses also had subsided, and the local board raised the road to its original level, it was held that the owners of the houses could not claim compensation, as the work was not done by reason of "the exercise of any of the powers of the Act" within the meaning of this section. These words the court held to apply to powers created by the Act, and not simply to powers transferred by s. 144 from the surveyor to the board; and as the raising of the roads was done by the board either in pursuance of their duty as surveyors of highways, or in exercise of such powers as surveyors have, the owners of the houses were not entitled to compensation (*Burgess* v. *Northwich Local Board* (1880), 6 Q. B. D. 264).

Where a local authority made sewers discharging into a natural stream under the powers conferred by ss. 15—17 of this Act, and such sewers brought down great quantities of sand and silt into the stream, it was assumed that they were liable to make compensation under this section (*Durrant* v. *Branksome U. D. C.*, [1897] 2 Ch. 291).

As to the right to compensation of a person whose property has been destroyed because of its having been exposed to infection, or having been damaged during disinfection, reference may be made to *Foster* v. *East Westmoreland Rural District Council* (1903), 68 J. P. 103; and to *Garlick* v. *Knottingley U. D. C.* (1904), 68 J. P. 494.

A notice to lay a sewer was given under s. 16, and the owner of the land claimed compensation "for the damage or injury to be sustained by the construction and execution of the works." Both parties appointed arbitrators, but after they had met, the local authority withdrew their notice, the works not having been commenced, and offered to pay the owner's taxed costs up to the time of such withdrawal. The offer was refused and the arbitrators awarded £10 for damages and also costs. It was held that the arbitrators had no jurisdiction to award either damages or costs under the submission in question (*Davis* v. *Witney U. D. C.* (1899), 63 J. P. 279). *Semble*, however, that compensation might have been allowed for damage between the date of the notice and the abandonment if this question had been submitted (*ibid.*).

An urban sanitary authority, on account of an epidemic of measles, ordered a board school to be closed for a fortnight, whereby the master lost his fees, amounting to 30*s.* a week. He claimed compensation under the above section, but it was held that he had no valid claim, the power to close the school being given by the Education Code, 1886, s. 98, and not by this Act (*Roberts* v. *Falmouth Urban Sanitary Authority* (1888), 52 J. P. 741).

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Where a local authority constructed a sewer under a public footpath, the soil of which belonged to the plaintiff, and made a shaft thirty feet deep into the sewer, with an entrance or manhole upon the footpath at a point where there was a junction of two sewers, it was held that the local authority were justified in so doing, a manhole being part of the sewer, and that the plaintiff's remedy was compensation under this section (*Swanston* v. *Twickenham Local Board* (1879), 11 Ch. D. 838).

It seems from the judgment of JESSEL, M.R., in *Taylor* v. *Oldham Corporation* (1876), 4 Ch. D. 395, that if a local authority lay a sewer in a private street, their so doing amounts to a compulsory taking of that part of the subsoil occupied by the sewer, and that they are bound to compensate the owner of the soil. But see *Leith Magistrates* v. *Field*, *infra*. It would appear from a recent decision that the owner of the subsoil of a highway under which a sewer is laid is entitled to compensation for damage done to the subsoil (*Northam Bridge and Roads* (*Proprietors of*) v. *South Stoneham Rural District Council* (1907), 71 J. P. 345). It follows from the remarks of JESSEL, M.R., in *Roderick* v. *Aston Local Board* (1877), 5 Ch. D. 328, 333 (and see *Jary* v. *Barnsley Corporation*, [1907] 2 Ch. 600), that this section would warrant a claim for compensation for lateral support to a sewer. In a subsequent case it was held that the Act imposed upon landowners, through whose land the sewer was laid, an obligation to preserve to such sewer a subjacent support, and gave them a right to immediate compensation for being deprived of free power to work subjacent mines, but not for the risk of percolation of sewage into the subjacent mines, as such percolation could only be caused by wrongful working of the mine (*In re Dudley Corporation* (1881), 8 Q. B. D. 86). These decisions as to support have, however, been to some extent affected by the Public Health (Support of Sewers) Act, 1883, *post*. The Gasworks Clauses Act, 1847, gives a gas company incorporated under it a right of support for their pipes, and a correlative right of compensation to the landowner for the burden thus cast upon him and for the limitation thus put upon the uses of his land. See *Normanton Gas Co.* v. *Pope* (1883), 52 L. J. Q. B. 629; *Benfieldside Local Board* v. *Consett Iron Co.* (1877), 3 Ex. D. 54; *London and North Western Rail. Co.* v. *Evans*, [1893] 1 Ch. 16.

By a Scotch Act (25 & 26 Vict. c. 101), s. 186, commissioners were empowered to cause to be made under the streets, public or private, such main and other sewers as should be necessary, and if needful, to carry such sewers through and across all underground cellars and vaults under any such streets, doing as little damage as might be, and making full compensation for any damage done; and if, for completing any of the aforesaid works, it should be found necessary to carry them into or through any enclosed or other lands, to carry the same into or through such lands accordingly, making full compensation. The owner of two private streets lodged a statutory claim of £1,250 for (1) ground permanently taken for sewage and drainage works; (2) surface and underground damage, loss, and inconvenience; (3) right of way for the sewers and other works, including right of access. It was held (1) that the commissioners were not liable in compensation for damage done by merely carrying sewers under a private street, or for way-leave; (2) that under the above claim an issue of damage to certain small parts of the line of streets alleged not to have been converted into private streets or dedicated to the public could not be tried (*Leith Magistrates* v. *Field* (1878), 6 Ct. of Sess. Cas. (4th ser.) 185). *Cf.*, however, *Taylor* v. *Oldham Corporation*, and *Northam Bridge and Roads* (*Proprietors of*) v. *South Stoneham R. D. C.*, *supra*.

Ultra vires and negligent acts are actionable.

The damage must have been caused by the proper exercise of some statutory power contained in the Act of 1875, and must not be due to the improper or negligent exercise thereof. Thus, where by the construction of a sewer an ornamental pond and rivulet in the plaintiff's grounds were drained, it was held that the board constructing the sewer could not be restrained by injunction, as they had not exceeded their statutory rights, but it was also held that if the injury had been caused by the unskilful or improper construction of the sewer the court would have interfered to

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prevent it, but as this was not the case, the rights of the plaintiffs were limited to a claim for compensation (*Stainton* v. *Woolrych* (1857), 23 Beav. 225). "The distinction is clearly established between damage from works authorised by statutes, where the party generally is to have compensation and the authority is a bar to an action, and damage by reason of the work being negligently done, as to which the owner's remedy by action remains": *per* CROMPTON, J., in *Brine* v. *Great Western Rail. Co.* (1862), 2 B. & S. 402, 411. This distinction was followed in *Clothier* v. *Webster* (1862), 6 L. T. (N. S.) 461. There the court held that where damage was caused by the *negligent* laying of a sewer, the owner of the property damaged might bring his action, and was not put to his claim for compensation. For a case where a local authority were held liable in respect of the negligent filling in of a trench in which a sewer had been laid, see *Cox* v. *Paddington Vestry* (1891), 64 L. T. (N. S.) 566; see also *Jacob* v. *Southend-on-Sea Corporation* (1902), 25 M. C. C. 57, 337; Times, December 16th, 1902; Times, May 21st, 1903, and *London General Omnibus Co., Ltd.* v. *Tilbury Contracting and Dredging Co., Ltd.* (1907), 71 J. P. 534, where damages were recovered from contractors for negligence in constructing a sewer. The *dictum* of CROMPTON, J., *supra*, was also adopted by the House of Lords in *Mersey Docks* v. *Gibbs* (1866), L. R. 1 H. L. 93, 112.

And see *Hall* v. *Batley Corporation* (1877); 42 J. P. 151; *Coe* v. *Wise* (1866), L. R. 1 Q. B. 711; *Raleigh Corporation* v. *Williams*, [1893] A. C. 540; *East Freemantle Corporation* v. *Annois*, [1902] A. C. 213; *Roberts* v. *Charing Cross, &c., Rail. Co.* (1903), 87 L. T. 732; *Ash* v. *Great Northern and City Rail. Co.* 1903), 67 J. P. 417; and *Canadian Pacific Rail. Co.* v. *Roy*, [1902] A. C. 220.

A public body was empowered by statute to carry out certain works, and in the same statute there was a provision for the payment of compensation to any person sustaining damages by reason or in consequence of the exercise of such power. The public body, in answer to a claim for compensation, pleaded that the damage was due to its contractor's negligence, and that, therefore, a claim for compensation was not the proper remedy. It was held that the onus was on the public body to prove such negligence (*St. James's and Pall Mall Electric Light Co.* v. *R.* (1904), 68 J. P. 288.)

The liability of a body created by statute is governed by the statutes which create it. The powers conferred when exercised at all must be exercised with due care. In the absence of a contrary intention, its duties and liabilities are the same as those imposed by the general law on a private person doing the same thing. But for mere nonfeasance no action lies except in regard to a duty towards the plaintiff, imposed by the statute and negligently omitted (*Gibraltar Sanitary Commissioners* v. *Orfila* (1890), 15 App. Cas. 400). And see *Loader* v. *London and India Docks Joint Committee* (1891), 65 L. T. (N.S.) 674; affirmed in C. A. (1891), 56 J. P. 165.

When a local board interfered with a watercourse in a manner not authorised by 21 & 22 Vict. c. 98, s. 68 (3), corresponding to s. 327 (4), *post*, it was held that they might be restrained from so doing, and that the person injured would not be left to his remedy for compensation only (*Grand Junction Canal Co.* v. *Shugar* (1871), L. R. 6 Ch. 482). See also *R.* v. *Darlington Local Board* (1865), 6 B. & S. 562; *Roberts* v. *Gwyrfai District Council*, [1899] 2 Ch. 608; and *Saunby* v. *City of London* (*Ontario*) *Water Commissioners* (1905), 22 T. L. R. 37.

The fact that a claim for compensation has been made under this section will not stop the plaintiff from obtaining relief by injunction or damages, if he is in law entitled to bring an action for such relief (*Pentney* v. *Lynn Paving Commissioners* (1865), 12 L. T. (N.S.) 818).

A local board, assuming to act under s. 39, erected a public urinal, partly upon a highway, and partly upon a strip of land belonging to the plaintiff, and so near to other adjoining land of the plaintiff as to be a nuisance to her, and her tenants, and to depreciate the value of her property. It was held that the plaintiff was entitled to a mandatory injunction to restrain the board from continuing the urinal upon her land, or so near thereto as to

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cause injury and annoyance to her or her tenants, and that it was not a matter in respect of which the plaintiff's remedy was by compensation under this section (*Sellors* v. *Matlock Bath Local Board* (1885), 14 Q. B. D. 928. But, on the other hand, in the same case, it appeared that abutting upon the highway, the plaintiff had land upon which an inn and some stabling were erected. These stood back from the highway, and in front of them was an open space forming part of the same land which had been left open to and on a level with the highway, until the defendants in exercise of their powers under s. 149, and for the convenience of the public, placed kerbstones and a raised footpath at the side of the highway, leaving openings so that carriages could still pass at convenient places to and from the plaintiff's land and premises. It was held that the plaintiff was not entitled to a mandatory injunction directing the defendants to remove the kerbstones, and that in the absence of any unreasonable conduct, the remedy for an injury caused by the kerbstones would be by compensation under this section.

If a public body do something in the exercise of their statutory powers they are not liable in respect of annoyance, not amounting to nuisance, of a temporary character in the execution of the work (*Harrison* v. *Southwark and Vauxhall Water Co.*, [1891] 2 Ch. 409). *Cf. Colwell* v. *St. Pancras Borough Council*, [1904] 1 Ch. 707; *Knight* v. *Isle of Wight Electric Light and Power Co., Ltd.* (1904), 68 J. P. 266.

The diversion by a local authority of sewage from one sewer into another already surcharged with sewage, whereby damage is occasioned to an occupier of premises is not a mere act of omission in the performance of the duty imposed by the Public Health Act, 1875, to provide sufficient sewers, and therefore only a subject of compensation under s. 308, but is the commission of a legal wrong in respect of which the occupier can maintain an action for damages (*Dent* v. *Bournemouth Corporation* (1897), 66 L. J. Q. B. 395). See also *Hawthorn Corporation* v. *Kannuluik*, [1906] A. C. 105.

Full compensation.

In ascertaining the proper amount of damage in respect of the making of a sewer, an arbitrator is entitled to take into consideration future as well as present damage, such as the impossibility of building over it. But *quære* whether he may take into consideration the possible defective construction of it, and the annoyance likely to arise from the opening of manholes and from stenches caused thereby (*Uttley* v. *Todmorden Local Board* (1874), 39 J. P. 56).

Prospective damage, as well as actual injury, must be taken into consideration: *per* BRETT, L.J., in *Re Dudley*, *ante*, p. 911; and see *Colac* v. *Summerfield*, [1893] A. C. 187; *Re Brewer and Hankin's Contract* (1899), 80 L. T. (N.S.) 127. See also as to "full compensation," *Barnett* v. *Eccles Corporation*, *ante*, p. 910.

Period of limitation for making claim.

Quære whether there is any limitation of the time within which a claim must be made under this section. See *Pettiward* v. *Metropolitan Board of Works* (1865), 19 C. B. (N.S.) 489. The limitation in s. 264 (now replaced by the Public Authorities Protection Act, 1893, *post*, p. 1062) has been held not to apply. See *Delany* v. *Metropolitan Board of Works* in the notes to that Act.

A plaintiff claimed on an award for compensation. The defence was that the claim was for damage alleged to have been incurred in laying a sewer, and that the sewer had been laid before the plaintiff's title accrued. KENNEDY, J., held that the plaintiff could not recover (*Helmore* v. *East Ham Local Board*, Times, December 13th, 1893; affirmed in C. A., February 9th, 1894). It would, however, appear that on a sale of land the right to claim compensation might be assigned to the purchaser (*Dawson* v. *Great Northern and City Rail. Co.*, [1905] 1 K. B. 260).

Jurisdiction of arbitrator.

The arbitrator cannot inquire into the legal title of the claimant, or to his right to compensation, but must limit his inquiry to the fact of damage and the amount of compensation. If the local authority desire to contest the right of the claimant to compensation they can do so in an action brought upon the award (*Pearsall* v. *Brierley Hill Local Board* (1884), 9 A. C. 595).

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Saving for works and property of certain authorities and for navigation and water rights, etc.

327. Nothing in this Act shall be construed to authorise any local authority—

(1.) To use injure or interfere with any sluices floodgates sewers groynes or sea defences or other works, already or hereafter made under the authority of any commissioners of sewers appointed by the Crown, or any sewers or other works already or hereafter made and used by any body of persons or person for the purpose of draining preserving or improving land under any local or private Act of of Parliament, or for the purpose of irrigating land ; or.

(2.) To disturb or interfere with any lands or other property vested in the Lord High Admiral of the United Kingdom or the Commissioners for executing the office of the Lord High Admiral for the time being or in Her Majesty's Principal Secretary of State for the War Department for the time being ; or,

(3.) To interfere with any river canal dock harbour lock reservoir or basin, so as to injuriously affect the navigation thereon, or the use thereof, or to interfere with any towing-path so as to interrupt the traffic thereof, in cases where any body of persons or person are or is by virtue of any Act of Parliament entitled to navigate on or use such river canal dock harbour lock reservoir basin, or to receive any tolls or dues in respect of the navigation thereon or use thereof ; or,

(4.) To interfere with any watercourse in such manner as to injuriously affect the supply of water to any rival canal dock harbour reservoir or basin, in cases where any such body of persons or person as last aforesaid would, if this Act had not passed, have been entitled by law to prevent or be relieved against such interference ; or,

(5.) To interfere with any bridges crossing any river canal dock harbour or basin, in cases where any body of persons or person are or is authorised by virtue of any Act of Parliament to navigate or use such river canal dock harbour or basin, or to demand any tolls or dues in respect of the navigation thereon or use thereof ; or,

(6.) To execute any works in through or under any wharves quays docks harbours or basins, to the exclusive use of which any body of persons or person are or is entitled by virtue of any Act of Parliament, or for the use of which any body of persons or person are or is entitled by virtue of any Act of Parliament to demand any tolls or dues,—

without the consent in every case of such Lord High Admiral or Commissioners for executing the office of Lord High Admiral, Secretary of State, commissioners, body of persons or person as are hereinbefore in that behalf respectively mentioned, such consent to be expressed in writing in the case of a corporation under their common seal, and in the case of any body of persons not being a corporation under the hand of their clerk or other duly authorised officer or agent. And nothing in this Act shall prejudice or affect the rights privileges powers or authorities given or reserved to any person under such local or private Acts for draining preserving or improving land as are in this section mentioned.

An urban district council resolved to construct a system of surface water drains in their district to discharge into the river Thames by means of an outfall drain, carried into, through, and under the towing path, the soil of which was vested in the Thames Conservators, who are a body of persons entitled by virtue of an Act of Parliament to navigate on or use such river, or to receive tolls or dues in respect of the navigation thereon or use thereof. It appeared from a special case stated in an action brought against the district council that the execution of the works would temporarily interfere with the traffic upon the towing path, but that it was the intention of the district council to so carry out the works as not at any time to interrupt the traffic over more than one-half of the path, and to avoid, as far as possible, any interference with the towing of vessels. It was held that, upon that statement, the execution of the works would interfere with the towing path so as to interrupt the traffic thereof within the meaning of s. 327 (3), *supra*, and that under those circumstances, by reason of that section, the council had no right to carry the outfall drain into, through, or under the towing path without first obtaining licence and permission so to do, and submitting to such restrictions and agreeing to such terms and conditions as the conservators thought proper to impose (*Thames Conservators* v. *Walton-upon-Thames U. D. C.* (1907), 71 J. P. 202).

A watercourse, though artificial, may have been originally made under such circumstances and have been so used as to give all the rights that the riparian owners would have had if it had been a natural stream (*Sutcliffe* v. *Booth* (1863), 27 J. P. 613). See also *Remfry* v. *Surveyor-General of Natal*, [1896] A. C. 558.

A local board made certain sewers, and in so doing injuriously affected a stream without having the consent of T., who was the occupier of a mill on the stream, and entitled to the flow of the stream to his mill. It was held that the corresponding provisions of 21 & 22 Vict. c. 98, s. 73, were not confined to cases in which a court of equity would grant an injunction against the local board, and that T. was in the position of a person who would, if the Act had not been passed, have been entitled by law to prevent the injuriously affecting of the stream. It was also held that the works not being authorised by s. 73, the claim of T. was not the subject of compensation, but ground of action (*R.* v. *Darlington Local Board* (1865), 6 B. & S. 562).

Although the consent is here required to be given in writing, it has been sought to stay summary applications in Chancery for injunctions against the works of local authorities by averments of *laches*, it being argued that such *laches* was equivalent to consent. But this defence was not successful in *Attorney-General v. Luton Local Board* (1856), 2 Jur. (N.S.) 180, where there had been much negotiation and correspondence before the commencement of the suit. See, however, the judgment of WOOD, V.-C., in *Attorney-General* v. *Proprietors of the Bradford Canal Co.* (1866), L. R. 2 Eq. 71.

As to what is a sewer made for "draining land under a local or private Act," see *London & N. W. Rail. Co.* v. *Runcorn R. D. C.*, [1898] 1 Ch. 34.

Reference to arbitration in case of works not within

328. Where any matters or things proposed to be done by any local authority, and not being within the prohibition aforesaid, interfere with the improvement of any river canal dock harbour lock reservoir basin or towing-path which any body of persons or person

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preceding section.

are or is entitled by virtue of any Act of Parliament to navigate on or use, or in respect of the navigation whereon or use whereof to demand any tolls or dues, or interfere with any works belonging to such river canal dock harbour or basin, or with any land necessary for the enjoyment or improvement thereof, the local authority shall give to such body of persons or person a notice specifying the particulars of the matters and things so intended to be done. If the parties on whom such notice is served do not consent to the requisitions thereof, the matter in difference shall be referred to arbitration; and the following questions shall be decided by such arbitration; (that is to say,)

(1.) Whether the matters or things proposed to be done by the local authority will cause any injury to such river canal dock harbour basin towing-path works or land, or to the enjoyment or improvement of such river canal dock harbour or basin as aforesaid:

(2.) Whether any injury that may be caused by such matters or things, or any of them, is or is not of a nature to admit of being fully compensated by money.

Effect of arbitration.

329. The result of any such arbitration shall be final, and the local authority shall do as follows; (that is to say,)

(1.) If the arbitrators are of opinion that no injury will be caused, the local authority may forthwith proceed to do the proposed matters and things:

(2.) If the arbitrators are of opinion that injury will be caused, but that such injury is of a nature to admit of being fully compensated by money, they shall proceed to assess such compensation; and on payment of the amount so assessed, but not before, the local authority may proceed to do the proposed matters and things:

(3.) If the arbitrators are of opinion that injury will be caused, and that it is not of a nature to admit of being fully compensated by money, the local authority shall not proceed to do any matter or thing in respect of which such opinion may be given.

Provision as to transfer of powers, etc.

330. No transfer of powers and privileges under this Act shall deprive any body of persons or person authorised by virtue of any Act of Parliament to navigate on any river or canal, or to demand for their or his own benefit in respect of such navigation any tolls or dues, of such powers and privileges as are vested in them by any Act of Parliament in relation to such river or canal.

Provision as to alteration of sewers.

331. Any body of persons or person authorised by virtue of any Act of Parliament to navigate on or use any river canal dock harbour or basin, or to demand any tolls or dues in respect of the navigation on such river or canal, or the use of such dock harbour or basin, may, at their own expense, and on substituting other sewers drains culverts and pipes equally effectual, and certified as such by the surveyer to the local authority, take up divert, or alter the level of any sewer drains culverts or pipes constructed by any local authority, and passing under or interfering with such rivers canals docks harbours or basins, or the towing-paths thereof, and may do all such things as may be necessary for carrying into effect such taking up diversion or alteration.

Saving for water rights generally.

332. Nothing in this Act shall be construed to authorise any local authority to injuriously affect any reservoir canal river or stream or the feeders thereof, or the supply quality or fall of water contained in any reservoir canal river or stream or in the feeders thereof, in cases where any body of persons or person would, if this Act had not passed, have been entitled by law to prevent or be relieved against the injuriously affecting such reservoir canal river stream feeders or such supply quality or fall of water, unless the local authority first obtain the consent in writing of the body of persons or person so entitled as aforesaid.

See notes to s. 176, *ante*, p. 881.

Where a riparian owner has a common law right to the uninterrupted flow of a stream past his tenement, the local authority, in interrupting or altering the flow for the purpose of providing a water supply for their district under the Public Health Act, 1875, are "injuriously affecting" the stream within s. 332, which they are not entitled to do unless they have first obtained the written consent of the riparian owner under that section, the local authority having no compulsory powers under that Act to interfere with or alter the flow of the stream, and the common law right of the riparian owner being unaffected by the Act. He is therefore entitled to bring an action to maintain his right, even though the act of the local authority may cause him no sensible damage (*Roberts* v. *Gwyrfai D. C.*, [1899] 2 Ch. 608). In the following session the district council applied for and obtained an Act of Parliament, the Gwyrfai District Water Act, 1900 (63 & 64 Vict. c. cxxv.).

Arbitration as to alteration of sewers injuriously affecting supply of water, etc.

333. Any difference of opinion that may arise between a local authority and any such body of persons or person as aforesaid, whether any sewers drains culverts or pipes substituted under the powers of this Act for sewers drains culverts or pipes constructed or laid down by any local authority are equally effectual with those for which they are substituted, or whether the supply quality or fall of water in any such reservoir canal river or stream as last aforesaid is injuriously affected by the exercise of powers under this Act, may, at the option of the party complaining, be determined by arbitration in manner by this part of this Act provided. The arbitrators shall decide the same questions as to the alleged injury, and the local authority shall proceed in the same way as is by this Act provided with regard to arbitrations in cases of alleged injury to rivers canals docks harbours and basins.

Saving for mines, etc.

334. Nothing in this Act shall be construed to extend to mines of different descriptions so as to interfere with or to obstruct the efficient working of the same; nor to the smelting of ores and minerals, nor to the calcining puddling and rolling of iron and other metals, nor to the conversion of pig iron into wrought iron, so as to obstruct or interfere with any of such processes respectively.

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NOTE.

See the observations on this section of LINDLEY, L. J., in *In re Dudley Corporation* (1881), 8 Q. B. D. 86, at p. 96. As to the right to work mines or minerals under sanitary works, see the Public Health (Support of Sewers) Act, 1883.

Saving for collegiate bodies and Government departments.

335. Any collegiate or other corporate body required or authorised by or in pursuance of any Act of Parliament to divert its sewers or drains from any river, or to construct new sewers, and any public department of the Government, shall have the like powers and be subject to the like obligations under this Act as they had or were subject to under the Sewage Utilization Act, 1867; and for that purpose the provisions of this Act applicable to purposes the same as or similar to those of the Sewage Utilization Act, 1865, and the Sewage Utilization Act, 1867, shall apply in substitution for the last-mentioned provisions.

PUBLIC HEALTH (WATER) ACT, 1878.

(41 & 42 VICT. C. 25.)

An Act to amend the Public Health Act, 1875, *so far as relates to the supply of Water.* [4th July, 1878.]

Preamble repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

Short title and construction.

1. This Act may be cited as the Public Health (Water) Act, 1878, and shall be construed as one with the Public Health Act, 1875.

2. [*Commencement of Act.*]

Sect. 2 repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

Duty of rural authority to provide or require provision of sufficient water supply, and procedure for enforcing such requirement.

3. It shall be the duty of every rural sanitary authority, regard being had to the provisions in this Act contained, to see that every occupied dwelling-house within their district has within a reasonable distance an available supply of wholesome water sufficient for the consumption and use for domestic purposes of the inmates of the house.

Where it appears to a rural sanitary authority, on the report of their inspector of nuisances, or their medical officer of health, that any occupied dwelling-house within their district has not such supply within a reasonable distance, and the authority are of opinion that such supply can be provided at a reasonable cost not exceeding a capital sum the interest on which at the rate of five per centum per annum would amount to twopence per week, or at such other cost not exceeding a capital sum the interest on which at the rate of five per centum per annum would amount to threepence per week, as the Local Government Board may on the application of the local authority determine under all circumstances of the case to be reasonable, and that expense of providing the supply ought to be paid by the owner or defrayed as private improvement expenses, proceedings may be taken as follows:

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(1.) The authority may serve on the owner of the house a notice requiring him, within a time specified in the notice and not exceeding six months from the date of the service thereof, to provide such supply, and to do all such works as may be necessary for that purpose :

(2.) If at the expiration of the time so specified the notice is not complied with, the authority may serve on the owner a second notice, informing him that if the requirements of the first notice are not complied with within one month from the date of the service of the second notice, the authority will themselves provide such supply, and that the expense of providing the supply will in that case be payable by the owner or as a private improvement expense :

(3.) If at the expiration of one month from the date of the serivce of the second notice the requirements of the first notice are not complied with, the authority may, subject as in this Act is mentioned, themselves provide the supply, and for that purpose they may enter upon the premises and execute all such works as appear to them necessary for obtaining a supply of water for the house ; and for the purposes of such entry sections one hundred and two and one hundred and three of the Public Health Act, 1875, shall apply until the works are completed, in the same manner as if an order of a court of summary jurisdiction had been made for the abatement of a nuisance on the premises, and that order had not been complied with :

38 & 39 Vict. c. 55.

(4.) Any expenses incurred by the authority in providing such supply and doing such works may, when the supply has been provided, be recovered in a summary manner from the owner of the house, or may, at the option of the authority, be declared, by their order, to be private improvement expenses :

(5.) Where the owners of two or more houses have failed to comply with the requirements of the notices served on them under this section, and the authority might, under this Act, execute the necessary works for providing a water supply for each house, the authority may, if it appears to them desirable, and no greater expense would be occasioned thereby, execute works for the joint supply of water to those houses, and apportion the expenses as they deem just.

The authority may, on cause being shown to their satisfaction why the requirements of a notice served by them under this section should not be complied with, withdraw the notice or modify the requirements thereof.

Provided, that nothing in this section contained shall be deemed to relieve the authority from the duty imposed upon them by the

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Public Health Act, 1875, of providing their district or any contributory place or part of a contributory place therein with a supply of water in cases where danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply, and a general scheme of supply is required, and such supply can be got at a reasonable cost.

[The following note is substantially a reproduction of the note under the above section in Vol. I. of Lumley's Public Health, 7th ed., by A. Macmorran, Esq., K.C., and the present editor of this work.]

By s. 11 the powers of rural sanitary authorities under this Act may be conferred upon urban sanitary authorities by the Local Government Board.

It has been held that the provisions of this Act do not repeal s. 62 of the Public Health Act, 1875, *ante*, p. 867 (*Colne Valley Water Co.* v. *Treharne* (1884), 48 J. P. 279). A notice may still be given, therefore, under that section.

The Local Government Board state that they are advised that this section is intended to meet cases where the required supply has to be provided by means of the expenditure of a capital sum in the construction of separate works of water supply, and not to cases where mains are to be laid in the district, and where, therefore, the appropriate remedy for defect in the water supply for premises appears to be the substitution of water from such mains. In such circumstances the district council should have recourse to the powers conferred upon them by s. 62 of the Public Health Act, 1875, under which the council may require houses to be supplied with water in certain cases.

As to what are *domestic* purposes, see the Waterworks Clauses Act, 1847, s. 35, *ante*, p. 466.

The Local Government Board state that they have not fixed upon any distance to be considered as reasonable within the meaning of the section. The point is one to be determined in the first instance by the local authority on the report of their medical officer of health or inspector of nuisances. The Board have, however, expressed the opinion generally that in determining the distance to be considered as reasonable, regard must be had to the labour involved in carrying by hand a sufficient amount of water for the purpose of an ordinary household and to the injurious results as regards cleanliness and health which are likely to arise if, in order to avoid this labour, the water used is stinted, or impure water more easily obtained is substituted for that which is purer but more distant.

The meaning of the provision in the section as to the cost of supply appears to be that when a house has not a sufficient supply of wholesome water, the rural authority may proceed under the following part of the section, provided the cost of providing a sufficient supply, *i.e.*, of executing the works necessary for the supply, does not exceed £8 13*s.* 4*d.* If the cost would exceed that sum, the rural authority must apply to the Local Government Board to determine what is a reasonable sum, not exceeding £13 in any case. Compare with this the Public Health Act, 1875, s. 62, *ante*, p. 867. The limit under the text does not apply to s. 62 of the Public Health Act, 1875 (*West Lancashire R. D. C.* v. *Ogilvy*, [1899] 1 Q. B. 377).

The Local Government Board have stated that they are advised that the limit of cost laid down in s. 3 of the Act at which water supply to houses may be enforced by rural district councils must be taken as referring to each individual house, and that when the cost of providing any house considered individually would exceed the limit, the district council cannot require a supply to be obtained under that section even if it appears that the cost of a supply for two or more houses would, if distributed over those houses, be within the specified limit.

As to the provisions of the Public Health (London) Act, 1891, see *ante*, p. 567.

See the enactments of the Local Government Act, 1894, *post*, p. 926.

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Appeal by owner against requirement to provide water supply.

4. Where an owner of a house has been required by the notice of a rural sanitary authority to provide a supply of water for his house, and objects to such requirement on any of the following grounds; (that is to say,)

(1.) That the supply is not required; or,

(2.) That the time limited by the notice for providing the supply is insufficient; or,

(3.) That it is impracticable to provide a supply at a reasonable cost; or,

(4.) That the authority ought themselves to provide a supply of water for the district or contributory place in which the house is situate, or to render the existing supply of water wholesome; or

(5.) That the whole or part of the expense of providing the supply, or of rendering the existing supply wholesome, ought to be charged on the district or contributory place;

he may, within twenty-one days after service on him of the second notice, address a memorial to the authority, stating his objections, and in that case it shall not be lawful for the authority to proceed with the execution of the works which they might otherwise execute under this Act, until they have been authorised to execute the same by a court of summary jurisdiction or by the Local Government Board in manner herein-after provided.

If the objections stated in the memorial do not include either the fourth or fifth of the above-mentioned grounds, the authority may apply to a court of summary jurisdiction for an order authorising them to proceed with the works; and thereupon the court shall summon the owner, and, if satisfied on hearing the case that the objections are not well founded, shall make an order authorising the authority to proceed with the works in the event of their not being executed by the owner within a time limited by the order.

If the objections stated in the memorial are or include the fourth and fifth of the above-mentioned grounds, or either of them, the authority shall forward a copy of the memorial to the Local Government Board, who may either cancel the requirement of the authority, or confirm the same, with or without modifications.

If the Local Government Board confirm the requirement they shall issue an order authorising the authority, subject to such modifications (if any) as they prescribe, to execute the works in the event of such works not being executed by the owner within a time limited by the order.

Any such order may, if the Local Government Board think it equitable so to do, apportion the expense of providing the supply between the owner of the house and the authority of the district comprising the contributory place in which the house is situate, or between the owner and any other person or persons.

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If the Local Government Board cancel the requirement on the grounds that the authority ought themselves to provide a supply of water for the district or contributory place in which the house is situate, or to render the existing supply wholesome, the memorial shall be deemed to have been a complaint of default made to the Local Government Board against the authority under the two hundred and ninety-ninth section of the Public Health Act, 1875.

38 & 39 Vict. c. 55.

In those cases where a copy of the memorial is required to be forwarded to the Local Government Board, the Board require to be supplied by the rural district council with (*a*) copies of the notices served, (*b*) copy of the report of the inspector of nuisances or medical officer of health, (*c*) an estimate showing, as regards each house, without regard to any other houses which might be furnished with a supply at the same time, that the supply can be furnished within the cost limited by s. 3, and (4) the observations of the rural district council upon the memorial of objection.

Appeal against apportionment of expenses.

5. Where the expenses of providing a joint supply of water for two or more houses are apportioned under this Act by a rural sanitary authority among the owners of the several houses, notice of such apportionment shall be forthwith given to each of such owners; and if any owner objects to the apportionment as unjust, he may, within twenty-one days after service on him of notice thereof, apply to a justice, and thereupon the justice may summon the authority and also the other owners, to show cause before a court of summary jurisdiction why the apportionment should not be varied, and the court may either dismiss the application or make such order varying the apportionment as to the court may appear reasonable.

Houses in rural districts not to be erected or rebuilt without sufficient water supply.

6. It shall not be lawful in any rural district for the owner of any dwelling-house which may be erected after the date of the commencement of this Act, or of any dwelling-house which after that date may be pulled down to or below the ground floor and rebuilt to occupy the same, or cause or permit the same to be occupied, unless and until he has obtained from the sanitary authority of the district a certificate that there is provided, within a reasonable distance of the house, such an available supply of wholesome water as may appear to such authority, on the report of their inspector of nuisances or of their medical officer of health, to be sufficient for the consumption and use for domestic purposes of the inmates of the house.

If the sanitary authority refuse to grant such certificate, the owner may apply to a court of summary jurisdiction for an order authorising the occupation of the house notwithstanding the refusal of the certificate, and thereupon the court shall summon the authority, and if the court, after hearing the case, is of opinion that the certificate ought to have been granted, the court may make an order authorising the occupation of the house.

Any owner who occupies a house or causes or permits it to be occupied in contravention of this section shall be liable on conviction by a court of summary jurisdiction to a penalty not exceeding ten pounds.

With regard to the reports required with a view to granting certificates for the purposes of s. 6 of the Act, the Local Government Board have stated that they are advised that local authorities are empowered to call upon their medical officers of health to make such reports, and, unless the terms of appointment of the officer provide for receiving remuneration in addition to his salary for such reports, the Board consider that his services in this respect must be regarded as covered by his salary.

Inquiry was made of the Local Government Board as to whether a rural district council are justified in charging applicants for a certificate with the cost of the analysis made before granting the certificate. In reply, the Board pointed out that the section provides that the local authority shall found their decision on the report of their inspector of nuisances or of their medical officer of health; but if for their own satisfaction they require a report from someone else, *e.g.*, from an analytical chemist, it appears to the Board that there is no legal authority which will enable them to require the owner of a house to pay for it.

If the owner gives the keys to his tenants with permission to put their furniture in, but not to reside themselves till the certificate has been obtained, he cemmits a technical breach of the statute (*Downie* v. *Fraser* (1901), 3 F. 1044).

See Public Health Acts Amendment Act, 1890, ss. 23 *et seq.* (adoptive sections), and Public Health (London) Act, 1891, s. 37, *ante*, p. 568.

Periodical inspection of water supply.

7. It shall be the duty of every rural sanitary authority from time to time to take such steps as may be necessary to ascertain the condition of the water supply within their district, and the authority may pay all reasonable costs and expenses incurred by them for the purpose of taking such steps. The authority, or any of their officers, or any person duly authorised in writing for that purpose by the authority, if they or he have or has reasonable ground for believing that any occupied dwelling-house within the district is without a proper supply of wholesome water, sufficient for the consumption and use for domestic purposes of the inmates of such house, shall be admitted into the premises for which such supply is required or from which the water supply may be derived for the purpose of ascertaining whether or not such house has such a supply within a reasonable distance; and for the purposes of any such admission sections one hundred and two and one hundred and three of the Public Health Act, 1875, shall apply in the same manner as if such admission were necessary for the purpose of examining as to the existence of any nuisance on the premises, and the person so authorised as aforesaid were an officer of the rural sanitary authority.

38 & 39 Vict. c. 55.

Explanation of s. 62 of 38 & 39 Vict. c. 55, as to the meaning of "reasonable cost."

8. Where application is made to the Local Government Board by a local authority under section sixty-two of the Public Health Act, 1875, to determine what is a reasonable cost within the meaning of that section, the Board may, for that purpose, fix, by order, a general scale of charges for the whole or any part of the district of the local authority, and the cost of the supply of water to any house within the area specified in the order shall be deemed to be determined to be a reasonable cost within the meaning of that section if it does not exceed the cost authorised by such general scale of charges.

Rating for water supply

9. Where a rural sanitary authority have provided a stand-pipe or stand-pipes for the supply of water to any portion of their district, they

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by stand-pipes.

may recover water rates or water rents from the owner or occupier of every dwelling-house within two hundred feet of any such stand-pipe, in the same manner in all respects as if the supply had been given on the premises.

Provided that if any such dwelling-house has, within a reasonable distance, and from other sources, a supply of wholesome water sufficient for the consumption and use of the inmates of the house, no water rate or water rent shall be recoverable from the owner or occupier of the house unless and until the water supplied by the authority by means of such stand-pipes is used by inmates of the house.

Where a water board were authorised by their special Act to make byelaws levying a water rate "in respect of lands and tenements distant not more than sixty yards from any main, . . . although such lands or premises are not actually connected with any main," it was held that they had no authority to levy a rate on lands without the prescribed limit, merely because such lands formed one holding with other lands within the prescribed limit (*Hunter District Water Supply and Sewerage Board* v. *Newcastle Wallsend Coal Co.*, [1896] A. C. 82).

Power to require water rates to be levied.

38 & 39 Vict. c. 55.

10. Where a sanitary authority under the provisions of the Public Health Act, 1875, as amended by this Act, supply water in any urban district or in any contributory place, and an application is made to them by any ten persons rated to the relief of the poor in such urban district, or by any five persons so rated in such contributory place, to charge water rates or water rents in respect of the water so supplied, it shall be incumbent upon the authority to exercise the powers given to them by the Public Health Act, 1875, and by this Act, of charging water rates or water rents in respect of all water supplied by them in such urban district or in such contributory place.

See s. 55 of the Public Health Act, 1875, *ante*, p. 860. See *Horn* v. *Sleaford R. D. C.* [1898] 2 Q. B. 358, cited *ante*, p. 895. A similar provision is contained in the Public Health (Ireland) Act, 1896 (59 & 60 Vict. c. 54), s. 5.

Powers of urban sanitary authorities in certain cases.

11. The Local Government Board may if they think fit by order invest any urban sanitary authority with all or any of the powers and duties which are by this Act given to a rural sanitary authority, and such investment may be made either unconditionally or subject to any conditions to be specified by the Board as to the time, portion of the district, or manner during at or in which the powers and duties are to be exercised.

See provisions of Local Government Act, 1894, *post*, p. 926. The powers of the Local Government Board under this Act have been freely exercised.

It has been suggested that this section does not enable the Local Government Board to apply some of the provisions of this Act to urban districts. Thus, under s. 6 a duty is imposed on owners of certain dwelling-houses in rural districts, and the Board have expressed some doubt whether, if an urban district council were invested with the powers of the section, the effect would be to impose on owners in the urban district the duty in question.

In connection with an application from an urban district council to be invested with the powers of ss. 3—5, the Local Government Board require to be informed if the district council have considered whether the individual supplies of wholesome water that they may require to be enforced can be provided at the reasonable cost defined by the Act, or whether the need of water could not be better met by schemes of public supply.

Sect. 11.

NOTE.

In the case of s. 7 specific evidence is required by the Board that the powers of ss. 62 and 70 of the Public Health Act, 1875, have been found insufficient in practice; and in the case of s. 9 a statement of grounds is required in support of the opinion that a supply of water by standpipes in the urban district is desirable and satisfactory. The Board also require to know the position of the houses it is proposed to supply by standpipes and their distance from water mains and standpipes respectively.

Forms in the schedule.

12. The forms contained in the schedule to this Act, or forms to like effect varied as circumstances may require, may be used, and shall be deemed sufficient for all purposes.

Powers of Act cumulative.

13. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred by Act of Parliament, law or custom.

THE SCHEDULE.

FORM (A.)

Form of Notice requiring Owner to provide a Supply of Water for an Occupied House.

To , the owner of the house occupied by [*state name of occupier*] and situated at [*give such description as may be sufficient to identify the premises*] within the district of [*describe the local authority*].

Whereas it appears to the above-named [*local authority*] on the report of their [*inspector of nuisances or their medical officer of health, as the case may be*] that the said house has not within a reasonable distance an available supply of wholesome water sufficient for the consumption and use for domestic purposes of the inmates of the house by reason of the existing supply not being [*wholesome or sufficient, or within a reasonable distance, as the case may be*], and that the requisite supply can be provided at a reasonable cost: And whereas the said [*local authority*] are of opinion that such supply ought to be provided at your expense as the owner of the said house, or defrayed as private improvement expenses:

Now, therefore, we, the said [*local authority*], in pursuance of the Public Health (Water) Act, 1878, do hereby require you to provide an available supply of wholesome water sufficient for the consumption and use for domestic purposes of the inmates of the said house within a reasonable distance from such house, and to do all such works as may be necessary for that purpose within [*state the time*] from the date of the service hereof.

Dated this day of 187 .

(Signed)
Clerk to the said [*local authority*].

FORM (B.)

Form of Second Notice to be served where Requirements of First Notice have not been complied with.

To , the owner of the house occupied by [*state name of occupier*] and situated at [*give such description as may be sufficient to identify the premises*] within the district of [*describe the local authority*].

Whereas on the day of the above-named [*local authority*], in pursuance of the Public Health (Water) Act, 1878, served on you a notice

Schedule.

bearing date the day of requiring you as the owner of the said house to provide an available supply of wholesome water sufficient for the consumption and use for domestic purposes of the inmates of the said house within a reasonable distance from such house, and to do all such works as might be necessary for that purpose within [*state the time*] from the date of the service of such notice :

And whereas the said notice has not been complied with : Now, therefore, we, the said [*local authority*], do hereby give you notice that if the requirements of the said first notice dated the day of are not complied with within one month from the date of the service hereof, we [*describe local authority*] will ourselves provide a supply of water for the said house, and do all necessary works for that purpose, and that the cost which may be incurred therein will be recovered from you summarily or be recovered as private improvement expenses.

Dated this day of 187 .

(Signed)

Clerk to the said [*local authority*].

LOCAL GOVERNMENT ACT, 1894.

(*So far as regards Water Supply.*)*

(56 & 67 VICT. C. 73.)

Powers of parish councils and parish meetings as to water.

THIS Act provides that there shall be a parish meeting for every rural parish and a parish council for every rural parish which has a population of 300 or upwards, certain provisions being made in the case of parishes with a less population and for grouping (s. 1). The parish council are elected from among the parochial electors, and consist of a chairman and a number of councillors fixed by the county council, not being less than five or more than fifteen (s. 3). † After conferring upon parish councils various powers and duties (ss. 5 and 6), and upon parish meetings certain duties under various adoptive Acts, including the Lighting and Watching Act, 1833 (as to which see the notes, *ante*, p. 825), and the Baths and Washhouses Acts, 1846 to 1882 (s. 7 (1)), the Act provides as follows :

Additional powers of parish council.

" **8.**—(1) A parish council shall have the following additional powers, namely, power—

. . . . .

" (e) to utilise any well, spring, or stream within their parish and provide facilities for obtaining water therefrom, but so as not to interfere with the rights of any corporation or person ; and

" (f) to deal with any pond, pool, open ditch, drain, or place containing, or used for the collection of, any drainage, filth, stagnant water, or matter likely to be prejudicial to health, by draining, cleansing, covering it, or otherwise preventing it from being prejudicial to health, but so as not to interfere with any private right or the sewage or drainage works of any local authority; **Sect. 8.**

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* As to gas supply, see notes, *ante*, p. 817.

† Partial repeals and amendments not affecting what is above summarised are effected by 60 Vict. c. 1, and 62 & 63 Vict. c. 10.

The powers in the text do not authorise a parish council to undertake a scheme of water supply for their parish or to execute any works of improvement involving a considerable expense. In a case in which expenditure was incurred by a parish council in these respects, the auditor surcharged the councillors who authorised the payment, and on appeal to the Local Government Board, that Board concurred in the reasons given by the auditor, which were as follows:

> (1) Because in undertaking the works the parish council exceeded their statutory powers; (2) because the power to utilise any well, spring, or stream within their parish and provide facilities for obtaining water therefrom conferred on a parish council by s. 8 sub-s. (1, e) of the Local Government Act, 1894, does not authorise such council to undertake a scheme of water supply for their parish or to execute any works of improvement involving a considerable expense; (3) because the estimated cost of carrying out the said works of water supply improvement exceeded the amount of a rate of 6*d.* in the £ on the rateable value of the said parish; (4) because the rural district council are invested under the Public Health Act, 1875, with adequate powers enabling them to execute works of water supply, which powers a parish council do not possess; wherefore inasmuch as the works carried out by the said parish council were such as were likely to (and did, in fact) bring the parish council in collision with persons alleging interference with their private rights, it was of great importance that such works should be exercised by the rural district council as the body equipped with the necessary rights and powers; (5) because the execution of the works by the parish council instead of by the rural district council was an injustice to certain ratepayers, inasmuch as the expenses incurred by the parish council in respect of the works have been defrayed out of moneys derived from the poor rates, whereas if the works had been exercised by the rural district council the expenses would have been paid out of a special expenses rate, levied in the manner provided by s. 230 of the Public Health Act, 1875; (6) because the expenditure in question was not such as the said parish council were legally authorised to incur, and the payments were, therefore, not legal charges upon the funds of the council. See Casson's decisions of the Local Government Board, 1903, p. 145.)

A parish council have no power to maintain an action in their own name without the Attorney-General, to enforce a right of the inhabitants of the parish to the use of a well or spring of water (*Stoke Parish Council* v. *Price*, [1899] 2 Ch. 277). *Cf. Sheringham Urban District Council* v. *Holsey* (1904), 68 J. P. 395, and see *Wallasey L. B.* v. *Gracey* (1887), 36 Ch. D. 593; and *Tottenham U. D. C.* v. *Williamson*, [1896] 2 Q. B. 353.

. . . . .

"(3) Nothing in this section shall derogate from any obligation of a district council with respect to the supply of water or the execution of sanitary works."

. . . . .

"**9.**—(1). . . .

"(15) Nothing in this section shall authorise the parish council to acquire otherwise than by agreement any land for the purpose of any supply of water or of any right of way." Powers for acquisition of land.

Sect. 9.

For enforcing the performance by district councils of their duty, the Act contains the following provisions:

Complaint by parish council of default of district council.

"**16.**—(1.) Where a parish council* resolve that a rural district council ought to have provided the parish with sufficient sewers, or to have maintained existing sewers, or to have provided the parish with a supply of water in cases where danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply of water, and a proper supply can be got at a reasonable cost, or to have enforced with regard to the parish any provisions of the Public Health Acts which it is their duty to enforce, and have failed so to do, or that they have failed to maintain and repair any highway in a good and substantial manner, the parish council may complain to the county council, and the county council, if satisfied after due inquiry that the district council have so failed as respects the subject-matter of the complaint, may resolve that the duties and powers of the district council for the purpose of the matter complained of shall be transferred to the county council, and they shall be transferred accordingly.

In order to effect a "due inquiry," notice must be given to the district council of the complaint, and such council must be afforded an opportunity of explaining why they have not taken action, and an order made without observing these requirements is not enforceable against the district council (*R.* v. *Huntingdonshire County Council* (1902), C. C. Times, Supp. 44).

"(2.) Upon any complaint under this section the county council may, instead of resolving that the duties and powers of the rural district council be transferred to them, make such an order as is mentioned in section two hundred and ninety-nine† of the Public Health Act, 1875, and may appoint a person to perform the duty mentioned in the order, and upon such appointment sections two hundred and ninety-nine to three hundred and two‡ of the Public Health Act, 1875, shall apply with the substitution of the county council for the Local Government Board.

38 & 39 Vict. c. 55.

"(3.) Where a rural district council have determined to adopt plans for the sewerage or water supply of any contributory place within the district, they shall give notice thereof to the parish council of any parish for which the works are to be provided before any contract is entered into by them for the execution of the works."§

Urban district councils and rural district councils.

The Act of 1894 further provides that urban sanitary authorities shall be called urban district councils and their districts urban districts, and provides for the election of rural district councils in rural sanitary districts (s. 21), and transfers to rural district councils the powers, duties and liabilities of rural sanitary authorities (s. 25 (1)), enacting that "rural district councils shall also have such powers, duties, and liabilities of urban sanitary authorities under the Public Health Acts or any other Act, and such provisions of any of those Acts relating to urban districts shall apply to rural districts, as the Local Government Board by general order direct" (s. 25 (5)). And by sub-s. (6) this power to make general orders is in addition to and not in substitution for the powers conferred on the Board by s. 276 of the Act of 1875, *ante*, p. 892. The Act further gives power to the Local Government Board to transfer to the councils of municipal boroughs (including county boroughs), and to the councils of urban districts, certain powers, including the powers, duties and liabilities of parish councils (s. 33), and makes special provisions to meet the case where on the appointed day any of the adoptive Acts is in force in a part only of a rural parish (s. 53). It further provides as follows:

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* As to small parishes, see s. 19 (8).

† See this section, *ante*, p. 901.

‡ See these sections, *ante*, pp. 901 *et seq.*

§ Under s. 51 of the Public Health Act, 1875, rural authorities as well as urban authorities may undertake water supply, subject to the conditions of the succeeding sections of the Act, as to which see *ante*, pp. 840 *et seq.*

Permissive transfer to urban district council of powers of other authorities.

"**62.**—(1.) Where there is in any urban district, or part of an urban district, any authority constituted under any of the adoptive Acts, the council of that district may resolve that the powers, duties, property, debts, and liabilities of that authority shall be transferred to the council as from the date specified in the resolution, and upon that date the same shall be transferred accordingly, and the authority shall cease to exist, and the council shall be the successors of that authority.

The present provision refers to a case where one of those Acts has been adopted in an urban district or part of an urban district either before or after the appointed day. It has been held that it applies in a county borough (*Kirkdale Burial Board* v. *Liverpool Corporation*, [1904] 1 Ch. 829). The transfer is to be effected by the passing of a resolution by the urban district council.

Where a district council takes over the powers, etc., of a special authority executing an adoptive Act, the expenditure of the council in administering the Act must be charged to the rate from which the expenses of the superseded authority were defrayed. Thus, it has been held that where an urban district council takes over the powers and duties of a burial board the expenses incurred by the council in carrying into execution the Burial Acts, and the payment of interest upon and repayment of moneys borrowed in pursuance of the Burial Acts are chargeable on the poor rates of the parish or parishes for which the burial board was formed, and are not payable out of the general district rate (*R.* v. *Connah's Quay Overseers*, [1901] 2 K. B. 174).

"(2.) After the appointed day any of the adoptive Acts shall not be adopted for any part of an urban district without the approval of the council of that district."

Provisions as to county council acquiring powers of district council.

"**63.**—(1.) Where the powers of a district council are by virtue of a resolution under this Act transferred to a county council, the following provisions shall have effect:—

"(a.) Notice of the resolution of the county council by virtue of which the transfer is made shall be forthwith sent to the district council and to the Local Government Board:

"(b.) The expenses incurred by the county council shall be a debt from the district council to the county council, and shall be defrayed as part of the expenses of the district council in the execution of the Public Health Acts, and the district council shall have the like power of raising the money as for the defraying of those expenses:

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"(c.) The county council for the purpose of the powers transferred may on behalf of the district council borrow subject to the like conditions, in the like manner, and on the security of the like fund or rate, as the district council might have borrowed for the purpose of those powers:

"(d.) The county council may charge the said fund or rate with the payment of the principal and interest of the loan, and the loan with the interest thereon shall be paid by the district council in like manner, and the charge shall have the like effect, as if the loan were lawfully raised and charged on that fund or rate by the district council:

"(e.) The county council shall keep separate accounts of all receipts and expenditure in respect of the said powers:

"(f.) The county council may by order vest in the district council all or any of the powers, duties, property, debts, and liabilities of the county council in relation to any of the said powers, and the property, debts, and liabilities so vested shall be deemed to have been acquired or incurred by the district council for the purpose of those powers.

"(2.) Where a rural district is situate in two or more counties a parish council complaining under this Act may complain to the county council of the county in which the parish is situate, and if the subject-matter of the complaint affects any other county the complaint shall be referred to a joint committee of the councils of the counties concerned, and any question arising as to the constitution of such joint committee shall be determined by the Local Government Board, and if any members of the joint committee are not appointed, the members who are actually appointed shall act as the joint committee." *

Power to act through district council.

"**64.** A county council may employ a district council as their agents in the transaction of any administrative business on matters arising in, or affecting the interests of its own district."

DISTRICT COUNCILS (WATER SUPPLY FACILITIES) ACT, 1897.

(60 & 61 VICT. c. 44.)†

An Act for giving Facilities for a Pure Water Supply in Rural Districts. [6th August, 1897.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

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* Where any powers and duties are transferred by the Act from one authority to another authority, provisions are made for the transfer of property, debts and liabilities (s. 67); for the adjustment of property and liabilities, in default of agreement by arbitration (s. 68); and for summary proceedings for the determination of questions as to transfer of powers (s. 70).

† See the Limited Owners' Reservoirs and Water Supply (Further Facilities) Act, 1877 (40 & 41 Vict. c. 31), *ante*, p. 709.

Lands may be charged by owners for water supply.

27 & 28 Vict. c. 114.

1. Where any person who is a landowner within the meaning of the Improvement of Land Act, 1864 (in this Act referred to as the principal Act), contributes any money towards the expenses incurred by a district council for the purpose of supplying water to any lands of such landowner, whether together with other lands or not, the amount so contributed may, with the sanction of the Board of Agriculture given under this Act, be charged on the land of the landowner so supplied with water in the same manner, as nearly as may be, and with the like effect as in the case of a charge under the principal Act.

Charge to be in favour of district council.

2. Where the landowner and the district council agree that the contribution shall be payable by half-yearly instalments, the charge under this Act may be granted in favour of the district council, to secure the payment to them of such contribution, and the sums payable in respect of the charge shall be in addition to any sums which may be payable for the water supply by way of water rate or water rent.

Time limit for charge.

3. A charge under this Act shall not be made for any term exceeding twenty-five years.

Sanctioning of charge by Board of Agriculture.

4. When the supply of water to the lands of the landowner will be beneficial to persons residing or engaged in labour on such lands, the Board may, if they think fit, sanction the charge, although it may not be shown that the supply of the water will effect a direct yearly increase in the value of the lands or be productive of a yearly revenue to the owner of the lands exceeding the yearly amount proposed to be charged thereon.

Power of Board of Agriculture to execute charge.

5. Where the annual sum to be made payable under a charge proposed to be granted by virtue of this Act in respect of the supply of water to any house or houses does not exceed the amount payable at the date of the charge for such water supply by way of water rate or water rent, the Board of Agriculture may execute the charge upon such information as they think fit to require, and in such case the requirements of the principal Act with respect to matters and proceedings previous to the execution of a charge shall not apply.

Extent of Act.

6. This Act shall not extend to Scotland or Ireland.

Short title.

7. This Act may be cited as the District Councils (Water Supply Facilities) Act, 1897, and shall be read with the Improvement of Land Act, 1864.

Instructions.

SESSION 1911.

INSTRUCTIONS AS TO APPLICATIONS TO THE LOCAL GOVERNMENT BOARD FOR PROVISIONAL ORDERS UNDER SECTIONS 176 AND 279 OF THE PUBLIC HEALTH ACT, 1875 (38 & 39 VICT. c. 55).

APPLICATIONS FOR PROVISIONAL ORDERS TO PUT IN FORCE THE COMPULSORY POWERS OF THE LANDS CLAUSES ACTS, UNDER SECTION 176 OF THE PUBLIC HEALTH ACT.

1.—(*a*) The application must be made by a petition under the seal of the local authority, containing the particulars required by s. 176 (3) of the Public Health Act, 1875. In case of a rural district council it is not necessary (unless special circumstances would lead to saving of expense) that a separate application be made or separate proceedings be taken as regards each contributory place affected by the proposals. The lands proposed to be purchased should be specified in the petition *by inserting therein before the prayer of the petition an exact copy of the book of reference mentioned in Instruction* 4, *amended, if necessary, so as to show by alterations in manuscript any changes or corrections ascertained between the preparation of the reference and the sealing of the petition.*

(*b*) Where it is only intended to carry sewers into, through, or under lands, such lands should not be included in the petition, as the local authority are empowered by s. 16 of the Public Health Act to carry sewers into, through, or under lands without purchasing the lands. See also s. 54 as to water mains.

2. The petition must be presented not later than the 31st October if the advertisements of the proposal were published in September, not later than the 30th November if they were published in October, and not later than the 17th December if they were published in November.

3.—(*a*) Attention is drawn to the provision in s. 176 of the Public Health Act, 1875, which empowers local authorities to give in the months of September and October, or of October and November, the advertisements and notices which are required before they can apply for a Provisional Order to enable them to obtain lands by compulory purchase. The local authority should avail themselves of this power as far as practicable, so that the petition may be presented at an earlier date, and so as to prevent the possible loss of a Parliamentary session in the event of errors being discovered too late to be remedied.

(*b*) The Board have found that in some instances a misapprehension has prevailed as to the period within which the advertisements and notices prescribed by s. 176 of the Public Health Act must be given. The section provides that the *advertisements* shall be published during three consecutive weeks in the months of September, October or November, and it is necessary that the three weeks in which the publication takes place should all be included in the same month, whichever of those above mentioned is selected for the purpose. Moreover, the advertisements must be published in the same newspaper each week, and the *notices* to the owners, lessees, and occupiers of the lands which it is proposed to purchase must in all cases be served in the month immediately following that in which the advertisements are published.

(*c*) The Board have also found that in some cases the deposit of the plan of the proposed undertaking at the place to be named in the advertisement

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referred to in s. 176 (2) (hereinafter referred to as the "deposited plan") has not been made until after the advertisement has been published; but the deposit should always be made at such time as to enable the deposited plan (and sections, if any) to be seen at all reasonable hours at the prescribed place so soon as the first advertisement appears. The plan should be marked "Deposited Plan" when deposited, and should (together with the sections, if any) remain open to inspection at all reasonable hours from the date of the deposit until the time when it is sent to the Board with the petition in accordance with Instruction 4 (*b*). When the deposited plan (and sections, if any) are returned by the Board, they should be re-deposited and remain at the prescribed place and be open to inspection at all reasonable hours until the bill to confirm the Provisional Order, if an Order is issued, has received the Royal Assent.

4.—(*a*) As regards the deposited plan and the book of reference, the following directions must be strictly complied with:—

i.) The deposited plan, which should be carefully corrected *on the ground*, should show not only the lands to be purchased, and the parish in which they are situated, but also the manner in which those lands will be utilised for the purposes in view, and the position, as nearly as practicable, of any buildings, tanks, reservoirs, or other works to be erected or constructed on the lands. The position in relation to the lands of any sewers, pipes or other works, which may be contemplated as part of the undertaking for which the lands are required, should also be shown. In the case of land required for making a new street or for widening a street, the frontage line of the new street, or of the street when widened, should be shown by a hard line of colour; and the deposited plan should be accompanied by sections showing the proposed level of the new street in relation to the adjoining lands and to any existing streets which will communicate with the new street, and showing any alteration in the levels of the streets to be widened or altered, so far as it affects lands in that street or the communication with any existing streets. In the case of any street proposed to be widened, the deposited plan should be figured so as to show the widths at all material points of the existing street, and of the street as proposed to be widened. Any tramway in such street should be accurately indicated on the plan, and the space at material points between the outer lines of the tramway and the footpath on each side of the road, both before and after the contemplated improvement, should be given.

(ii.) The deposited plan should be coloured so as to distinguish the lands proposed to be actually purchased, and each parcel of land, notwithstanding that several may belong to one owner, should be separately numbered, the outside boundaries of each parcel being defined by hard lines, and the buildings (if any) on each parcel being linked into it, so that it may be seen to what properties each number applies.

(iii.) The book of reference should also be prepared, *on the ground*, at the same time as, and in conjunction with, the deposited plan; it should show the parish in which the lands are situate, each parcel of land being numbered to correspond with the deposited plan, and being described so as to show clearly what properties are covered by each number. (See Instruction 1 (*a*).)

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(iv.) A copy of the book of reference should be placed with the deposited plan at the time of deposit, for local inspection.

(*b*) The petition should be accompanied by a copy of the deposited plan (and sections, if any), or of so much thereof as relates to the petition, and by a book of reference (in duplicate), altered (if necessary) to correspond to the copy included in the petition in accordance with Instruction 1 (*a*). The deposited plan (and sections, if any) should also accompany the petition for comparison with the copy, and when returned by the Board should be re-deposited in accordance with Instruction 3 (*c*).

5.—(*a*) A statutory declaration specifying the manner in which the notices under s. 176 were served upon the owners, lessees, and occupiers, and the names of the persons so served, should be made by the person who served them, and the service must be effected strictly in accordance with one of the modes prescribed by s. 267 of the Act. The service should be effected by a responsible person. In the event of difficulty arising in ascertaining the actual interests of several owners, lessees, or occupiers where the boundaries between lands are not well or clearly defined, and the interests may overlap, it would be well to describe the lands as belonging to all the parties who claim or who are believed to have an interest in the lands, and to serve the notices accordingly, so as to avoid possible objection to the lands being taken on the ground of want of due notice.

(*b*) A statutory declaration should also be made by the clerk to the local authority, showing that all the other requirements of s. 176 and of these instructions have been duly complied with, and the following exhibits should be annexed, viz.:—(1) Copies of the newspapers containing the advertisements; (2) a copy of the form of notice served upon owners, lessees, and occupiers; and (3) a statement showing, with reference to the numbers of the deposited plan, the several parcels of land in respect of which notice was served upon each owner, lessee, and occupier, and what reply, if any, has been received from the owner, lessee, and occupier in respect of each parcel of land.

6. In the case of land required for widening a street, the fact that the street is repairable by the inhabitants at large should be stated in the petition.

7. The declaration or declarations should be sent to the Board with the petition.

8. Standing Orders 38 and 39 of both Houses of Parliament, extracts from which are appended, must be complied with, and immediately after the last of the deposits required by the Standing Orders has been made, the Board should be furnished with an *affidavit* for production to the Examiners of Standing Orders, in proof that the requirements of the Standing Orders referred to have been complied with. This affidavit must state definitely that the plans, sections, books of reference or maps deposited at the Private Bill Office and at the office of the Clerk of the Parliaments respectively in compliance with Standing Orders 39 above referred to, are in accordance with those orders *duplicates* of those deposited with the Board.

9. Where the taking of the land will not involve the acquisition of any house or houses occupied, either wholly or partially, by thirty or more persons of the working class, whether as tenants or lodgers, this fact should be stated in the *affidavit*, so as to show that the Standing Order does not apply.

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10. Every statutory declaration and affidavit must be made or sworn before a Justice of the Peace or a Commissioner for Oaths, and must be stamped with a half-crown *impressed* stamp; and each exhibit to a statutory declaration or affidavit must be marked by the Declarant or Deponent and by the Justice of the Peace or Commissioner for Oaths, as the case may be, in the usual way.

11. Two or more local authorities cannot jointly petition for a provisional order to enable them to put in force the compulsory powers of the Lands Clauses Acts. Either each local authority must present a separate petition in respect of the particular lands which they require, or else the several local authorities must combine under s. 285 of the Public Health Act, 1875, for the purpose of carrying the proposed scheme into execution, and a petition must be presented by one of them with regard to all the land required. If the latter course is taken, an agreement under the section should be entered into before application is made for the provisional order, and a copy of the agreement should accompany the application.

12. If the local authority intend to apply for a provisional order to enable them to purchase lands compulsorily in connection with proposed works of sewerage or water supply, some of which will lie outside their district, they will probably find it convenient to satisfy the requirements of s. 32 or s. 54 of the Public Health Act, when they are taking the necessary proceedings for the Provisional Order; but the advertisements and notices under those sections and the proof of compliance with the statutory provisions should be distinct from the advertisements, notices and proofs under s. 176 of the Act. If this course is adopted it may have the effect of preventing delay at a subsequent stage of the proceedings in cases where advertisements and notices under s. 32 or s. 54 have to be issued before the works for which the land is required can be commenced. Sect. 53 should also be complied with, where it is intended to construct a reservoir to hold more than 100,000 gallons of water.

APPLICATIONS FOR PROVISIONAL ORDERS FOR THE CONSTITUTION OF UNITED DISTRICTS UNDER SECTION 279 OF THE PUBLIC HEALTH ACT, 1875.

1. The application should be made by a resolution of the local authority of each of the districts proposed to be formed into a united district. The resolution should specify the purposes for which the united district is to be constituted and the basis upon which the representation on the Joint Board and the contributions to the common fund by the constituent authorities are proposed to be settled. A copy of the resolution, certified by the clerk, should be forwarded to the Board, together with a copy of any agreement to combine which may have been executed.

2. The application should be made not later than the 17th December next, and it is desirable that it should be sent in before that date if possible.

EXTRACTS FROM STANDING ORDERS.

Standing Order 38 (*House of Commons*).

"Where any Bill contains or revives or extends power to take compulsorily or by agreement any land in any local area as defined for the purposes of this order, and such taking involves or may involve the taking in that area of any house or houses occupied either wholly or partially by thirty or more persons of the working class, whether as tenants or lodgers, the promoters

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shall deposit in the *Private Bill Office*,* and at the office of the Central Authority on or before the 21st day of December, a statement giving the description and postal address of each of such houses, its number on the deposited plans, the parish in which it is situate, and the number (so far as can be ascertained) of persons of the working class residing in it, and also a copy of so much of the deposited plans (if any) as relates thereto.

"This order shall not apply where a statement in pursuance of this order was deposited in respect of the Act, the powers of which are proposed to be revived or extended.

"For the purposes of this order the expression 'local area' means—as respects London, the administrative county of London, as respects England and Wales (outside London) any borough, or other urban district, and elsewhere than in a borough or other urban district, any parish; . . .

"The expression 'house' means any house or part of a house occupied as a separate dwelling.

"The expression 'working class' means mechanics, artisans, labourers, and others working for wages, hawkers, costermongers, persons not working for wages but working at some trade or handicraft without employing others except members of their own family, and persons, other than domestic servants, whose income in any case does not exceed an average of thirty shillings a week, and the families of any of such persons who may be residing with them.

"The expression 'Central Authority' means, as regards England and Wales the Local Government Board . . .

"The expression 'Bill' includes a Bill confirming a Provisional Order."

Standing Order 39 (*House of Commons*).

"Whenever plans, sections, books of reference or maps are deposited in the case of a provisional order . . . proposed to be made by any public department or county council, duplicates of the said documents shall also be deposited in the *Private Bill Office*†: provided that with regard to such deposits as are so made at any public department or with any county council after the prorogation of Parliament, and before the 30th day of November in any year, such duplicates shall be so deposited on or before the 30th day of November."

N.B.—*It is particularly requested that the petition, declaration, affidavit, notices, and other documents may be on foolscap paper of the usual size, and that whenever more than two copies of these documents are required for use such documents may be printed so as to facilitate examination.*

H. C. MUNRO,
Secretary.

Local Government Board, Whitehall,
8th September, 1910.

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* In Standing Order 38 (House of Lords) the "Office of the Clerk of the Parliaments" is substituted.

† In Standing Order 39 (House of Lords) the "Office of the Clerk of the Parliaments" is substituted.

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INSTRUCTIONS AS TO APPLICATIONS TO THE LOCAL GOVERNMENT BOARD FOR PROVISIONAL ORDERS UNDER SECTIONS 297 AND 303 OF THE PUBLIC HEALTH ACT, 1875 (38 & 39 VICT. c. 55).

REPEAL, ALTERATION, OR AMENDMENT OF LOCAL ACTS OR CONFIRMING ACTS.

1. The application should be made by a resolution of the local authority, asking the Board in general terms to repeal, alter, or amend the Act, wholly or partially, as the case may require, and setting out the objects desired to to be attained, and a copy of the resolution, certified by the Clerk, should be forwarded to the Board. The resolution should be sufficiently wide in its terms to cover any provisions incidental to or consequential upon the main objects of the application which may, in the course of the consideration of the case by the Board, prove to be required. It is suggested that the resolution might, as a general rule, be in a form to the following effect:

> Resolved that the make application to the Local Government Board for the issue of a provisional order under ss. 297 and 303 of the Public Health Act, 1875, to partially repeal, alter or amend the Act so as:
>
> (1) To .
>
> (2) To .
>
> (3) For the several purposes of this application, or for purposes connected with, incidental to or consequent on those purposes to make any such alteration or amendment of the said local Act or of any other local Act, or of any Act confirming a provisional order made in pursuance of any of the sanitary Acts or of the Public Health Act, 1875, and in force in the said [borough] [district] as may be necessary or desirable.

2. The application must be received by the Board not later than the 15th November next, and it is very desirable that it should be sent in before the 1st October next.

3. The application should be accompanied by a King's Printers' copy of the Act, and by a statement showing the particular provisions which it is proposed should be repealed, altered or amended, the precise alterations desired, and any provisions which require consequential alteration; and in the event of the local Act having been previously altered by provisional order or local Act, a reference to such order or Act should be given. The statement should also show clearly the grounds upon which each of the proposed amendments is desired.

4. In any case in which powers are sought which deviate from, are in extension of, or are repugnant to the general law, the statement should show the circumstances peculiar to the locality which are alleged to justify the grant of the powers, and should contain a reference to any recent precedents for the grant of such powers.

5. If the powers sought can be obtained under a General Act, the reasons for not proceeding under the provisions of the general law should be fully set out in the statement.

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6. If additional borrowing powers are sought, it is desirable that the precise purposes for which the powers are required should be stated, and that estimates should be furnished, showing as far as practicable the amounts required for each purpose. References should also be given to the provisions of the Acts under which the local authority claim to have power to carry out the purposes for which the borrowing powers are sought.

7. If power is sought for the acquisition or use of any land for the manufacture or storage of gas, a concise description of such land shonld be furnished, together with a map on a scale of not less than twenty-five inches to the mile showing clearly the position of the land, and a statement of the number of houses situate within 300 yards of such land.

8. If, in any other case, the application proposes to confer the power to acquire any land or relates to an area which is described by reference to a map or plan, the map or plan must be on a scale of not less than six inches to the mile and must accompany the application, and in all cases in which plans, etc., are deposited, Standing Order 39 of each House of Parliament must be complied with.

9. In the case of any proposal to acquire land, Standing Order 38 must also be complied with, and an *affidavit* must be supplied for production to the Examiner of Standing Orders, in proof that the requirements of those Standing Orders have been complied with, or that Standing Order 38 does not apply, as the case may be. This affidavit must be sworn before a Justice of the Peace or a Commisioner for Oaths, and stamped with a half-crown *impressed* stamp, and must state definitely that the plans, sections, books of reference or maps deposited at the Private Bill Office and at the Office of the Clerk of the Parliaments respectively, in compliance with Standing Orders 39 above referred to, are, in accordance with those orders, *duplicates* of those deposited with the Board.

EXTRACTS FROM STANDING ORDERS.

Standing Order 38 (*House of Commons*).

"Where any Bill contains or revives or extends power to take compulsorily or by agreement any land in any local area as defined for the purposes of this order and such taking involves or may involve the taking in that area of any house or houses occupied either wholly or partially by thirty or more persons of the working class, whether as tenants or lodgers, the promoters shall deposit in *the Private Bill Office** and at the office of the Central Authority on or before the 21st day of December, a statement giving the description and postal address of each of such houses, its number on the deposited plans, the parish in which it is situate, and the number (so far as can be ascertained) of persons of the working class residing in it, and also a copy of so much of the deposited plans (if any) as relates thereto.

"This order shall not apply where a statement in pursuance of this order was deposited in respect of the Act, the powers of which are proposed to be revived or extended.

"For the purposes of this order the expression 'local area' means—as respects London, the administrative county of London, as respects England and Wales (outside London) any borough, or other urban district, and elsewhere than in a borough or other urban district, any parish; . . .

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* In Standing Order 38 (House of Lords) the "Office of the Clerk of the Parliaments" is substituted.

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"The expression 'house' means any house or part of a house occupied as a separate dwelling.

"The expression 'working class' means mechanics, artisans, labourers and others working for wages, hawkers, costermongers, persons not working for wages but working at some trade or handicraft without employing others except members of their own family, and persons, other than domestic servants, whose income in any case does not exceed an average of thirty shillings a week, and the families of any such persons who may be residing with them.

"The expression 'Central Authority' means, as regards England and Wales, the Local Government Board . . .

"The expression 'Bill' includes a Bill confirming a provisional order."

Standing Order 39 (*House of Commons*).

"Whenever plans, sections, books of reference or maps are deposited in the case of a provisional order . . . proposed to be made by any public department or county council, duplicates of the said documents shall also be deposited in *the Private Bill Office** : provided that with regard to such deposits as are so made at any public department or with any county council after the prorogation of Parliament, and before the 30th day of November in any year, such duplicates shall be so deposited on or before the 30th day of November."

N.B.—*It is particularly requested that all applications and statements may be on foolscap paper of the usual size.*

H. C. MUNRO,
Secretary.

Local Government Board, Whitehall,
8*th September*, 1910.

PUBLIC HEALTH ACT, 1875 (SUPPORT OF SEWERS,) AMENDMENT ACT, 1883.

(46 & 47 VICT. c. 37.)

An Act to amend the Public Health Act, 1875, *and to make provision with respect to the support of public sewers and sewage works in mining districts.* [25th August, 1883.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title and construction.

1. This Act may be cited as the Public Health Act, 1875 (Support of Sewers), Amendment Act, 1883, and shall be construed as one with the Public Health Act, 1875 (in this Act called the Principal Act), as

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* In Standing Order 39 (House of Lords) the "Office of the Clerk of the Parliaments" is substituted.

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[The notes under this Act are substantially reproductions of the notes under the Act in Vol. I. of Lumley's Public Health (7th ed.), by A. Macmorran, Esq., K.C., and the present editor of this work.]

In *In re the Corporation of Dudley* ((1881), 8 Q. B. D. 86) it was held that the Public Health Act, 1875, imposed upon landowners through whose land a sewer was laid, an obligation to preserve to such sewer *subjacent* support, and gave them a right to immediate compensation for being deprived of the free power of working subjacent mines. The court seemed to doubt whether any obligation was imposed as to *lateral* support, though from the remarks of JESSEL, M.R., in *Roderick* v. *Aston Local Board* ((1877), 5 Ch. D. 328), it might be inferred that in the opinion of that learned judge there was a right of lateral support for which the landowner was entitled to compensation. See also the decision of PARKER, J., on this point in *Jary* v. *Barnsley Corporation, infra. Cf.* the decision in *Metropolitan Board of Works* v. *Metropolitan Rail. Co.* (1869), L. R. 4 C. P. 192, where it was held that there was, under the terms of the Acts there in question, no implied right of lateral support for a sewer.

The present Act, which was passed in consequence of the decision in the *Dudley Case*, *supra*, deals with the subject of support, but though the title would imply that it has reference only to sewers, the definition in the next section shows that it has a much wider application. Its effect is briefly as follows: The local authority are not to be entitled to minerals under any sanitary works constructed by them unless such minerals have been expressly purchased. Such minerals must not be worked if under or near the sanitary works without giving notice to the local authority, who may then take the minerals, making compensation for them. The local authority may, however, define the extent to which they desire support to be left. The amount of compensation is to be settled by arbitration. If the local authority refuse to take the minerals, the owner is to be at liberty to work them, though he must not do so in any unusual manner so as to cause damage. Power is preserved to the owner, if he is prevented from working the mines under the sanitary works, of making mining communications so as to work the mines on either side. Except as aforesaid, a local authority are not hereafter to acquire any right of support, whether vertical or lateral; but the saving clause preserves all rights acquired before the passing of the Act. This Act materially affects the amount of compensation to be paid by a local authority in a mining district, for as by the mere execution of a sanitary work they acquire no right of support, they will not have to pay for it until the owner of the mines is desirous of working them. It is to be noticed, however, that the Act is limited in its application to support from mining lands. The law as to support in other cases remains as it was before the Act passed; that is to say, as declared in *The Corporation of Dudley's Case, supra.*

By a provisional order, dated June 14th, 1875, and confirmed by Act of Parliament on August 13th, 1875, the Local Government Board authorised the B. Corporation to put in force the powers of the Lands Clauses Act with regard certain lands which they required for sewage purposes. On October 27th, 1875, the corporation gave the predecessor in title of the plaintiffs notice to treat under that order for some of his land (excepting the mines and minerals) which they required to take, and the question of compensation was referred to arbitration. On August 9th, 1876, the arbitrator made his award in respect of the lands (excepting all minerals lying within or under the same). The compensation having been paid, the lands, excepting all minerals lying within or under the same, were conveyed to the corporation by two conveyances, dated May 9th, 1878, and April 5th, 1883; the conveyances contained a power for the owner to work the minerals by underground workings only. On April 11th, 1876, the corporation gave notice to the plaintiffs' predecessor in title, under the Public Health Act, 1875, that they proposed and intended to construct an outfall sewer on certain land in his

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possession, and on February 19th, 1878, the umpire made his award (purporting to be under s. 308 of that Act) reciting an agreement that the landowner should have rights of herbage, passage and building over the land, and awarding that the corporation should pay a perpetual ground rent of so much per lineal yard for the sewer. On August 25th, 1883, the Support of Sewers Act, 1883, *supra*, was passed. On July 14th, 1904, the B. N. Colliery Company, Limited, the lessees of the mines, gave notice to the corporation that they intended to commence work within forty yards of the sewage works, and on July 15th the corporation gave notice that if the company proceeded to work they would demand compensation in respect of any damage to their sanitary works, and that they claimed that they had acquired a right to support in respect of the sanitary works before the passing of the Support of Sewers Act, 1883, *supra*. In an action by the plaintiffs for a declaration that upon the true construction of the Support of Sewers Act, 1883, *supra*, and of the other Acts of Parliament, and of the provisional order, awards and conveyances, the defendants were not entitled to have (1) the outfall sewer, or (2) the main sewage works, or either of them, supported by the underlying or adjacent minerals. It was held that the corporation acquired in respect of the lands conveyed for the purpose of the main sewage works a natural right of support for such land by the subjacent minerals and the adjacent lands of the conveying parties, and for any buildings or works reasonably in the contemplation of the parties when the land was conveyed; that with regard to the outfall sewer the corporation had, on the principle of *In re Dudley Corporation*, *supra*, a right to support from the subjacent land, if not also from the adjacent land in the same ownership, which right must be considered to have been covered by the award; and that the sewage works and outfall sewer were accordingly sanitary works in respect of which a right to support had been acquired before the passing of the Support of Sewers Act, 1883, *supra*, and in respect of which right no compensation was, at the passing of that Act, recoverable; and that the sewage works and outfall sewer were, therefore, excepted by s. 5 of the Act from the operation of the Act, and were entitled to the rights of support required in respect of them (*Jary* v. *Barnsley Corporation*, [1907] 2 Ch. 600).

2. In this Act,— Interpretation.

The expression "sanitary work" means any existing or future building or work constructed by or vested in or under the control of a local authority under the powers or for the purposes of so much of the principal Act or of any general or local Act or provisional order as relates to the construction or maintenance of any works of sewerage, drainage, sewage disposal, lighting, or water supply, and includes any fixtures, pipes, fittings, or apparatus connected with any such work, and belonging to or used by the local authority:

The expression "support" includes vertical and lateral support:

The expression "Sanitary Act" means the Act or provisional order under the authority of which a sanitary work has been or is constructed or is maintained, whether such Act or order was passed and confirmed before or after the commencement of this Act:

The expression "person" includes a body corporate.

3. The provisions of the Waterworks Clauses Act, 1847, sections eighteen to twenty-seven* (both inclusive), with respect to mines, Application of provisions

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* See these sections, *ante*, pp. 442 *et seq.*

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of the Waterworks Clauses Act, 1847, 10 & 11 Vict. c. 17, with respect to mines, to sanitary works over mines.

shall, in relation to any sanitary work of a local authority, be deemed to be incorporated with this Act and with the Sanitary Act under the authority of which such sanitary work has been or is constructed or is maintained, with the following modifications (that is to say) :—

(1.) For the purposes of such incorporation the said provisions of the Waterworks Clauses Act, 1847, shall be construed as if the expression "the undertakers" referred to the local authority, and as if the expression "the special Act" referred to such Sanitary Act and this Act, and as if expressions relating to pipes, conduits, or other works referred to the sanitary work :

(2.) The local authority, by or with any notice under the Waterworks Clauses Act, 1847, of willingness to treat for or make compensation, or of intention to prevent or interfere with the working of any mines, may specify and define the nature and extent of support which they require to be left, and any such notice may extend to minerals beyond the distance of forty yards mentioned in the said Act or to such less distance as the local authority think fit :

(3.) As regards sanitary works existing at the passing of this Act the local authority shall cause the survey and map referred to in section nineteen of the Waterworks Clauses Act, 1847, to be made within twelve momths after the passing of this Act :

(4.) The amount of any compensation in respect of support for a sanitary work payable by a local authority under the provisions of the Waterworks Clauses Act, 1847, as incorporated with this Act or the Sanitary Act, together with the costs of and incident to settling the same by arbitration or otherwise, shall be paid, charged, and borne in the same manner, and subject to the same powers and provisions as to borrowing and otherwise, as is provided with respect to the expenses of the construction or maintenance of the sanitary work by the Sanitary Act :

(5.) A local authority may from time to time make agreements with the owners, lessees, or occupiers of or the persons working any mine for compromising any claim made or to be made in respect of anything done or omitted before the passing of this Act in relation to the matters in this Act mentioned or otherwise for carrying into effect the purposes of this Act in relation to the past or future working of mines.

The provisions of this Act shall apply to every sanitary work as defined in this Act, whether the land on, in, over, or under which such work is situate is or is not vested in or occupied by the local authority, and is or is not wholly or partially dedicated to the public as a street, highway, or public place.

The position of a local authority who have a common law right to lateral support of land owned by them was recently considered under the following circumstances:

In 1875 the Manchester Corporation purchased, by agreement, under the powers of a special Waterworks Act of 1849, (1) an estate from S., who reserved to himself the minerals thereunder, with full powers to work the same without making compensation; (2) an adjoining estate from T., including the minerals. In 1875 the corporation obtained a further special Act, which incorporated the Waterworks Clauses Act, 1847, and under this special Act they constructed a reservoir partly on the S. land and partly on the T. land. By s. 22 of the Waterworks Clauses Act, 1847, if the owner, lessee, or occupier of any mines lying under the reservoirs of the undertakers, or within forty yards therefrom, be desirous of working the same, he must give the undertakers notice in writing of his intention so to do thirty days before the commencement of working, and if it appear to the undertakers, after an inspection of the mines, that the working of the mines is likely to damage their works, and they be willing to pay compensation for the mines to the owner, lessee, or occupier thereof, then he shall not work the same; and by s. 23 if before the expiration of the thirty days the undertakers do not state their willingness to pay compensation to such owner, lessee, or occupier, he may work the mines as if that Act and the special Act had not been passed. The appellants, who were lessees of the mines under the S. land, gave notice to the corporation of their intention to work the mines under and adjacent to the reservoir, but the corporation gave no counter-notice of their willingness to pay compensation for the mines, and accordingly the appellants worked the mines and caused a subsidence of the T. Land. In an action to restrain the appellants from so working their mines as to damage the T. land:—*Held*, that the mining sections (18—27) of the Waterworks Clauses Act, 1857, did not deprive the corporation of their common law right to lateral support of the surface of the T. land, and that they were entitled to an injunction in respect of the appellants' workings, both within and without the forty yards limit (*New Moss Colliery, Ltd.* v. *Manchester Corporation*, [1908] A. C. 117).

Forty yards is the extent prescribed by the Waterworks Clauses Act. Under this Act the local authority may require support to any extent, whether less or more than forty yards. This will to some extent, if not altogether, obviate the difficulty arising out of the decision in *Metropolitan Board of Works* v. *Metropolitan Rail. Co., ante*, p. 940.

Compliance with the requirement as to the making of a survey or map is a condition precedent to the right to recover damage for injury caused by subsidence (*South Staffordshire, etc. Co.* v. *Mason* (1887), 56 L. J. Q. B. 255).

The clause at the end of the section was probably inserted to protect the rights of the owners of mines under roads vested in urban authorities under the Public Health Act, 1875, s. 149. It has been decided that that section does not vest the minerals in the urban authority; and the Highway Act, 1878 (41 & 42 Vict. c. 77), s. 27, contains an express provision with reference to the right to work mines under disturnpiked roads which have become vested in an urban authority. See *Attorney-General* v. *Conduit Colliery Co.*, [1895] 1 Q. B. 301. The case of *Normanton Gas Co.* v. *Pope* (1883), 52 L. J. Q. B. 629, may be referred to in illustration of this clause. The question in that case related to the right of subjacent support to gas pipes laid in a highway.

Limitation of right to support for sanitary works over mines.

4. Except as in this Act provided, a local authority shall not by reason only of anything contained in the Sanitary Act under the authority of which a sanitary work has been or is constructed or maintained be deemed to have acquired or to be entitled to or to be bound to acquire or make compensation for any right of support for such sanitary

Sect. 4. work as against any person owning or working or being lessee or occupier of or entitled to work or otherwise interested in any mine; and nothing in such Sanitary Act shall be deemed to have subjected or to subject any such person to any liability to the local authority in respect of damage to a sanitary work caused in or consequent upon the working of any mines in a reasonable and proper manner.

This section gives the Act a retrospective operation except as to cases in which a right of support has already been acquired, as to which see the next section. See *Jary* v. *Barnsley Corporation, supra.* Its effect is to prevent for the future the acquisition of any right of support otherwise than as provided by the Act. Therefore no such right can hereafter be acquired by prescription. But as to the common law right of support which may belong to a local authority, see *New Moss Colliery, Ltd.* v. *Manchester Corporation, ante,* p. 943.

With reference to the operation of the Statute of Limitations upon the right of action arising out of subsidences caused by mining operations, see *Darley Main Colliery* v. *Mitchell* (1886), 11 App. Cas. 127; *Crumbie* v. *Wallsend Local Board,* [1891] 1 Q. B. 503; *Tunnicliffe and Hampson, Ltd.* v. *West Leigh Colliery Co., Ltd,,* [1906] 2 Ch. 29, *per* ROMER, L.J.; [1908] A. C. 27, *sub nom. West Leigh Colliery Co., Ltd.* v. *Tunnicliffe and Hampson, Ltd.*

Savings.

5. Nothing in this Act shall be construed to repeal, invalidate, or affect any express enactment in a sanitary or other Act with respect to rights of support for sanitary works, or any agreement made before the passing of this Act with respect to such rights, or to affect any action, arbitration, or other legal proceedings concluded before or pending at the passing of this Act.

Where any right of support has been acquired before the passing of this Act by a local authority in respect of any sanitary work, and no compensation is at the passing of this Act recoverable in respect of such right, nothing in this Act shall be construed to apply to the work in respect of which such right has been acquired, or operate to deprive the local authority of such right or to entitle any person to any compensation in respect thereof, to which such person would not have been entitled if this Act had not been passed.

This section was inserted to preserve to the local authority such rights of support as they had actually acquired by prescription or otherwise at the date of the Act.

But such a right must have been actually acquired; in other words, if it is claimed to have been acquired by prescription, the prescriptive period must have been complete before the passing of the Act. If it was not complete the landowner will be entitled to the benefit of the Act.

As to such rights there is nothing in the previous sections of the Act which can apply so as to govern in any way the relative rights of the local authority and the landowner in respect of rights of support. See *Jary* v. *Barnsley Corporation, supra.*

SUGGESTIONS OF THE LATE SIR ROBERT RAWLINSON, K.C.B., AS TO WATER SUPPLY.

Suggestions of the late Sir Robert Rawlinson, K.C.B., as to water supply

By permission, the following extract is made from an invaluable book, published by the late Sir Robert Rawlinson, K.C.B., under the auspices of the Local Government Board, entitled "Suggestions as to the preparation of District Maps and of Plans for Main Sewerage, Drainage and Water Supply," by Robert Rawlinson, C.B., Civil Engineer (Chief Engineering Inspector to the Local Government Board), Revised to 1878.

"The general principles of water supply may be stated briefly as follows:

1. To select the purest available source after careful analysis.
2. To filter the water, if necessary, in order to free it from suspended matter and from dissolved organic matter.
3. To store it in covered tanks, and to raise it a sufficient height for distribution by gravitation.

"Applying these principles, water may be obtained—

From mountain ranges, which act as condensers.
,, rivers and streams.
,, natural springs.
,, wells artificially formed.
,, impounding reservoirs.
,, a combination of two or more of the sources named.

"And may be conveyed for distribution—

By means of open conduits (before filtration).
,, ,, covered conduits, always *after filtration.*
,, ,, cast-iron pipes under pressure.

"Where a district is to be supplied with water, all other things being equal, the softest and purest water should be adopted.

"A water supply may be gravitating; or the water may be pumped by steam power. The relative economy of one or the other form of works will depend on details of cost and quality of water. As a rule gravitating works require the largest capital. The annual working expenses of a pumping scheme may, however, be greatest.

"Reservoirs, for service distribution, should be covered.

"If filters are used the water should not be exposed in open reservoirs and tanks after filtration.

"Cast-iron pipes, properly varnished, should be used for street mains. It is not advisable to use mains less in internal diameter than three inches.

"Lead should not be used with soft water, either in service pipes or in cisterns. Wrought-iron tubes with screw joints may be used for house service. All house taps should have screw joints, and be of the description known as '*screw down,*' so as to admit of easy repairs.

"In jointing and fixing wrought-iron service pipes care should be taken to insert double screw joints at convenient points, to allow of the removal of a length of pipe for alteration and repairs.

Suggestions.

"Wrought-iron service pipes are cheaper, stronger, and more easily fitted than service pipes of lead. Certain sorts of made ground, in towns, act rapidly and injuriously on both lead and iron pipes, such as furnace ashes, waste from gasworks and chemical refuse, old building refuse containing lime. Pipes should not be laid in such material without a lining of sand or puddle, or other special protection.*

"Earthenware pipes may be used for water conduits, provided the joints are not placed under pressure.

"Aqueducts of iron will probably be cheaper than masonry or brickwork constructions.

"Water may be brought in by gravity, that is, water obtained at a distance may be found at such an elevation above the district to be supplied as to allow of its flowing through conduits or pipes to the tanks or cisterns from which it is to be distributed. A fall of five feet per mile is sufficient for a conduit of two feet diameter. Conduits of larger diameters may have less fall, down to six inches per mile, as on the New River, London.

"Well water will vary in purity according to the nature and the soluble matters contained in the ground from which the well derives its supply.

"Shallow wells are liable to pollution from matter in the surface soil. Deep wells only, *i.e.*, wells of a sufficient depth to afford water of the requisite purity, should be sunk; and the surface-soil water should be cut off from the deep water by casing the well above by cylinders of iron, or by puddle, or by concrete.

"Salt rock is found in the new red sandstone formation. There is risk in deep sinking from this cause; but good water is frequently found in the new red sandstone.

"A spring is a low point or lip of an underground reservoir of water in the stratification. A well sunk in such strata will most probably furnish, besides the volume of the spring, an additional supply of water, if the well or borehole is within the basin.

"Natural springs may be utilised by storing the water in a reservoir which will contain the flow of one entire day, or longer period, such reservoir to be at sufficient elevation.

"Reservoirs should be walled with masonry, or with brick, or be of concrete, and may be covered in to protect the water from contamination.

"Springs of water at a distance may be conducted in channels contouring the intervening distance, or in pipes of iron or of earthenware.

"The fall for a conduit may vary according to circumstances. The fall of the New River is about one in 10,000. Small conduits may have intermediate falls, not, however, exceeding one in 300, unless cast-iron pipe conduits are used.

"In forming an earthenware pipe conduit, great care must be taken to make the trench watertight, and then to lay and joint the pipes so as to secure that the conduit shall be sound and tight through its whole length, to prevent leakage into the subsoil, and to obviate the risk of impure water from the subsoil entering the pipe.

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* Wrought-iron service pipes for gas are laid in a wooden trough V-shaped, which is filled with asphalte or with Portland lime concrete placed around and over the pipe so as to protect it from the subsoil. Some of the London gas companies protect wrought-iron pipes in this manner.

Suggestions.

"In forming a conduit the pipes should be laid in straight lines, from point to point. There should be means of inspection and ventilation in each quarter-mile at the least, and of washing out at all convenient points.

"Valley lines may be crossed by means of cast-iron syphon pipes; that is, a pipe may be laid across a valley to conduct the water under pressure.

"All valley or syphon lines should have double the fall in their length of the ordinary conduit.

"There should be means provided to wash out and cleanse such syphon pipe or pipes at the lowest point.

"Cast-iron pipes should be coated inside and out with black varnish.

"Turned and bored joints are cheapest, but joints made with lead are probably the safest.

"Wrought-iron pipes with screw joints may be used up to 1½-inch diameter.

"Cast or wrought-iron, not lead, should be used for elevated tanks and cisterns.

"Tanks to store rainwater may be of brick, of masonry, or of concrete. They should either be arched over, or be roofed, so as to protect the water from the direct action of the sun and from fouling.

"The ground excavated for the formation of a main service tank should be made perfectly watertight. The bottom may be covered with concrete or with clay puddle, and the side walls be backed or lined with concrete or with clay puddle. The thickness of the puddle should not be less than twelve inches.

"If the site selected for a main service tank is sand, gravel, or opened jointed rock, great care must be taken to give the puddle a full and even bearing over the whole surface area; open joints in rock must be cleaned out, and then be filled up with concrete. In gravel, large stones must be removed and the entire surface brought to a level, smooth, and even plain. Clay puddle will only resist the pressure of water when it rests solidly on an even watertight bed, so as to prevent the water forcing holes through it, which will be the case if there is a rough uneven surface and open spaces, for however small the spaces beneath may be, water, when under sufficient pressure, will penetrate them.

"Main service tanks require to have an inlet pipe, an outlet or supply pipe, a wash-out or cleansing and an overflow pipe. These latter, the cleansing and overflow, may be joined.

"The main tank or tanks should have valve-wells so arranged as to enable the system of supply to be carried on independently of the main tank.

"On plate (No. 15) attached hereto is shown a plan and section of a main service underground storage tank with valve-wells.

"By this arrangement the supply of water will flow direct to the inlet-well, and may be passed on through this well to the main tank. The supply may be obtained from the outlet-well by opening the valve in the main tank and the valve in the supply-well. By closing the valves communicating with the main tank in both wells, and opening the valve on the end of the connecting pipe in the inlet-well and the valve on the supply pipe in the outlet-well, the supply of water may go on independently of the main tank. The overflow must be formed at the inlet-well to be connected with the wash-out. There must be manhole openings in the covering arches, and end

Suggestions. windows in each bay, as shown on Plate No. 15. This is merely a sketch to show the general arrangements.

"Elevated tanks for immediate or daily supply of water should be of cast-iron or of wrought-iron. Cast-iron requires more practical skill in construction.

"In arranging cast-iron tanks of large dimensions, care must be taken to support the bottom and stay the sides. The tie-rods should pass through the tank-plates, and be secured to outside washers, and not to internal angle-iron.

"Cast-iron or wrought-iron main supply tanks should be arranged so that the supply of water may be carried on in a corner compartment, as shown in the sketch of a cast-iron tank, with a separate supply system, to allow of the main tank being repaired, cleaned, and occasionally painted or varnished.

"Junctions of bolts and tie-rods may give way if not repaired in time. Cleaning and painting should therefore be regularly done once a year.

"Wrought-iron tie-rods must not have a strain exceeding six tons for each square inch of cross sectional area of the best iron rods.

"Iron house service tanks should not be exposed to the direct action of the sun, but should be clothed. An inclosure of boards with felt beneath will form a good protection. Water, especially for drinking, must be kept cool.

"The sketch is not complicated by showing any details of tank plates or tie-rods, but is intended only to show the proposed mode of arranging a small inner tank, within which all the operations of supply may be carried on independently of the larger tank. This will be found to be of the utmost importance in use. The small tank will be connected with the larger tank by means of a pipe having a valve on it.

"In arranging a main-pipe from pumps, the pumping main-pipes should have sectional capacity sufficient to allow of the velocity in such main-pipe not exceeding two feet per second.

"Where a river flows through a valley over porous substrata, sinking a well or wells in the strata within the influence of the river filtration is a cheap and ready method of obtaining river-water naturally filtered. Wells so situated must, however, be carried above the level of extreme floods, and the filtering must be effective.

"If a single well on a river bank does not produce sufficient water, or if the subsoil is clay impervious to water, then trenches may be excavated parallel to the river or stream, in which trenches perforated earthenware pipes may be laid, leading to a well or wells. The trenches above such pipes should be filled in with fine assorted gravel, charcoal, and sand, so as to form a filtering medium within reach of the dry weather flow of such stream or river. These trenches should not be less than six feet deep to the top of the pipes.

"Any overflow or waste-water pipe from a service reservoir or tank should deliver the water at an open end into a channel, sewer or drain, so as to prevent gases rising back through such overflow or waste-water pipe to the water in the reservoir or tank, a result very apt to follow if the pipe is directly connected with the sewer or drain.

"Water readily absorbs foul gases and may become poisonous by such means. The possibility of such contamination taking place must therefore be prevented.

Suggestions.

"Waterworks conduits should be laid at such depth and be so covered with earth as to prevent the water becoming heated unduly by the rays of the sun or being injuriously affected by frost in winter. This depth may be considered as not less than three feet.

"Brick and masonry tanks, if arched, may be covered in with sand or fine earth to the depth of eighteen inches, which will preserve the water cool.

"All covered reservoirs and tanks should be ventilated.

"All supply-pipes should be arranged in such manner as to allow of easy inspection and subsequent repairs. Stop-taps should be placed betwixt the main and the building in all cases, so as to allow of isolation of any line of service pipe for repairs.

"All house service tanks and service pipes should be fixed in such manner that the best rooms shall not be flooded in case of leakage or overflow.

"Ready means of access to all tanks and cisterns should be provided, to allow of inspection, cleansing, or repairs. Where gas is in use, a jet, or ring of jets, may be so placed that during severe frosts the pipes and tanks shall be preserved from freezing.

"Up-bends should not be formed on lines of main pipes or on service pipes. If up-bends are inevitable, air-valves should be provided to let out the air at such bends.

"Bends should not be formed at right angles on pipes, but the pipe should be brought round in a curve.

"All mortar used in waterworks should be capable of setting under water.

"Portland or Roman cement may be used.

"Deep well sinking or deep boring necessarily involves special knowledge and appropriate and special tools. A description of such work and such tools is not needed by a practical well-sinker, and would not be of use to anyone else.

"A public supply of water should not (if practicable) be less in volume than fifteen gallons daily per head of the population. This, in towns below 20,000 population, will include water for public purposes and for trade requirements. For villages it may not be possible to obtain more than from five to ten gallons per head. High pressure and constant service should be secured wherever practicable.

"Water at and below six degrees of hardness is considered 'soft water'; above this range water is termed 'hard.'

"Hardness in water implies one grain of bi-carbonate or sulphate of lime in each gallon of water.

"Each degree of hardness destroys 2½ ozs. of soap in each 100 gallons of water used for washing. Soft water is, commercially, of more value than hard water, in proportion to the worth of 5 ozs. of soap to each 200 gallons for each degree of hardness.

"Where water is drawn from a river, and is occasionally turbid, there should be sufficient reservoir capacity to receive and store not less than ten (10) days' supply to allow of subsidence before filtration.

"Sand filters should not be forced to filter at a greater rate than about fifty gallons for each superficial foot of sand surface in each twenty-four hours.

Suggestions. "Sand filters will require surface cleansing, probably on an average not less than twelve times in each year. During hot summer weather surface cleansing may be required at intervals of a week. It will be of the utmost importance to filter through clean materials at all times.

"*Impounding reservoirs.*—Care is required in selecting a site for an impounding reservoir to ascertain if tbe area to be covered with water will be water-tight, or can at a moderate cost be made so.

"Areas of mill-stone-grit, mountain-limestone, the coal-measures, the oolites, and other strata liable to be fissured, or have open-jointed rock, may be treacherous and difficult to make water-tight; and if material to form part of the embankment is excavated from the inner area, so as further to open the strata, the site may be ruined.

"An artificial embankment should have a water-tight and sound base; the depth or the puddle-trench must depend upon the nature of the strata.

"The outer portion of the embankment must be effectively drained, and if there are springs of water in the puddle-trench (as there usually are), these must be collected and brought away. The entire bottom area of a puddle-trench had better be filled with rich Portland lime concrete, and all the drains beneath the bank be protected with similar concrete.

"A top-water conduit may be made to convey the stream during the construction of the works, or there may be a flood-water culvert through the solid ground on one side, to safely convey the water during the construction of the embankment.

"No form of culvert or other works for drawing off water should be constructed within or beneath or through the deepest made portion of the bank, but the outlet-tunnel, valve-chamber, and works connected with drawing off the water of the completed reservoir must be in the solid ground, on one side of the valley; the outlet-tunnel and valve-well may be of cast-iron, of brick, or of concrete, and may have its invert 10 or 15, or even up to 20 feet above the bottom of the reservoir at the inner toe of the bank. This tunnel may be level. At the centre of the bank the valve-chamber should be formed and should be divided by a cast-iron vertical mid-feather, in which cast-iron division the valves must be placed, one above the other, communicating with a vertical pipe in the outer half of the valve-chamber.

"A syphon-pipe may be laid along the invert of the outlet-tunnel to draw the portion of water below the invert at any time this is required.

"The outlet-tunnel must communicate with the water in the reservoir and with the stream outside; that is, there must be culverts at each end of the outlet-tunnel for these purposes.

"An overflow, or bye-wash, must always be formed in the solid ground, and must be in steps, so as to limit any fall to about three feet.

"It will be a safe rule to provide three feet of bye-wash for each hundred acres of gathering-ground.

"Impounding reservoirs, if constructed in accordance with these suggestions, will have neither pipes nor valves buried beyond repairs or renewals. The artificial bank will be undisturbed by works, the head of water on the outlet-valves will be reduced, and at the tier of valves in the valve-well no

Suggestions.

valve need be worked under a greater head than some 10 or 15 feet. Formerly it was common to lay cast-iron pipes, or to form culverts of brick or stone beneath reservoir banks at their deepest part, and to wall in the outlet-valves so as to have, in some cases, 100 feet head of pressure : culverts, cast-iron pipes, and valves, being buried and fixed so as to be impossible to repair, without for the time destroying the embankments."

POWERS OF LOCAL AUTHORITIES IN SCOTLAND IN REGARD TO GAS AND WATER SUPPLY.

I.—GAS SUPPLY.

The Sale of Gas Act, 1859 (an Act for regulating measures used in sales of gas), and the Sale of Gas Act, 1860, both apply to Scotland, but they have no operation until adopted : in counties, by the justices ; and in royal burghs, by the magistrates. See now the Town Councils (Scotland) Act, 1900 (63 & 64 Vict. c. 49), s. 8. The administrative powers and duties of the justices are now transferred to the county council. See Local Government (Scotland) Act, 1889 (52 & 53 Vict. c. 50), s. 11 (5). The Acts of 1859 and 1860 are amended by the Sale of Gas (Scotland) Act, 1864, the object of which is to enable these Gas Acts, when adopted in royal burghs, to apply to the whole district within the parliamentary boundaries. See these three Acts, *ante*, pp. 258—271.

The Gas and Water Works Facilities Acts, 1870 and 1873, apply to Scotland. The "undertakers" contemplated by those Acts are "any company, companies, or person." The Public Health Act, 1875 (38 & 39 Vict. c. 55) (applicable only to England and Wales), by s. 161 prescribes the conditions under which an urban authority may themselves undertake the supply of gas within their district for public and private purposes. The section then proceeds : "Where an urban authority may under this Act themselves undertake to supply gas for the whole or any part of their district, a provisional order authorising a gas undertaking may be obtained by such authority under and subject to the provisions of the Gas and Water Works Facilities Act, 1870, and any Act amending the same ; and in the construction of the said Act the term 'the undertakers' shall be deemed to include any such urban authority : Provided that for the purposes of this Act the Local Government Board shall throughout the said Act be deemed to be substituted for the Board of Trade."

In considering the powers of local authorities in Scotland in regard to gas supply, the first Act to be examined is the Burghs Gas Supply (Scotland) Act, 1876 (39 & 40 Vict. c. 49). It is an adoptive Act, and until adopted has no operation. The adoption according to the Act lies with the town council or police commissioners, as the case may be—now with the town councils under the Town Councils (Scotland) Act, 1900, s. 8. It contains, first, a general authority to the commissioners (now the town councils), "subject to the provisions of this Act," to erect and maintain "gasworks, gasometers, and pipes for the distribution of gas," for public and private purposes (s. 18, *post*, p. 959). Where there is a company not incorporated by Act of Parliament or authorised by provisional order confirmed by Act of Parliament supplying gas within a burgh, the Act gives the town councils power to purchase the undertaking and gives the company power to sell (s. 20, *post*, p. 960). In the same case the town council may give a notice to treat for the undertaking and purchase the same compulsorily under the Lands Clauses Act, observing the prescribed machinery and conditions (s. 21, *post*, p. 961). The Act is silent as to the case of a burgh in which there is a company supplying gas under the powers of an Act of Parliament or provisional order. The effect is that in such a case local authorities in Scotland—like local authorities in England—have no power to undertake gas supply without a special Act of Parliament.

The Burgh Police (Scotland) Act, 1892 (55 & 56 Vict. c. 55)—coming in place of the Lindsay Act of 1862, which it repealed—requires the local authorities to light the streets (s. 99). This section incorporates all the public general Acts relating to gas, including the Gas and Water Works Facilities Acts, 1870 and 1873. *Cf.* s. 161 of the Public Health Act, 1875, *ante*, p. 819. By s. 42 in any burgh where various municipal or police authorities possess "jurisdictions and powers" in relation to, *inter alia*, gas supply, these are transferred to "the provost, magistrates, and town council or commissioners," and the latter may apply to the Secretary for Scotland for a provisional order in certain cases (s. 45). See now the Town Councils (Scotland) Act, 1900, s. 8, *post*, p. 957.

The Local Government (Scotland) Act, 1894 (57 & 58 Vict. c. 58), s. 44, authorises the formation of a special lighting district in any county under the conditions there stated. When such a special lighting district is formed the district committee are authorised to adopt the Burghs Gas Supply (Scotland) Act, 1876, in which event the provisions of the Local Government (Scotland) Act, 1889 (52 & 53 Vict. c. 50), with respect to capital, expenditure, borrowing, and audit of accounts apply in lieu of the corresponding provisions of the Act of 1876.

The following are the Acts above referred to exclusively relating to Scotland:

BURGHS GAS SUPPLY (SCOTLAND) ACT, 1876.

(39 & 40 VICT. C. 49.)

An Act to make Provisions for Lighting Burghs in Scotland with Gas.
[11th August, 1876.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Sect. 1.

Short title.

1. This Act may be cited as the Burghs Gas Supply (Scotland) Act, 1876.

Application of Act limited.

2. The provisions of this Act shall not empower the town council or commissioners of police of any burgh in which this Act shall be adopted, as commissioners under this Act, to supply gas within any part of the area of supply over which the town council or commissioners of police of any other burgh, or any gas company, incorporated by Act of Parliament or any company, partnership, or person authorised by any provisional order confirmed by Act of Parliament, shall have statutory powers to supply gas at the date of the adoption of this Act in such burgh.

Interpretation of terms.

3. The following expressions in this Act have the meanings hereby assigned to them; that is to say,

"Burgh" shall mean royal burgh and parliamentary burgh, and includes every burgh and place having town councillors or commissioners of police elected under any general or local Act of Parliament:

"Commissioners" means the authority for executing this Act in any burgh in which the same shall be adopted:

"Elector" means any person entitled to vote in the election of town councillors or police commissioners in any burgh or any ward thereof:

"Ratepayer" has the same meaning in this Act as "householder" has in the General Police and Improvement (Scotland) Act, 1862, as amended by the General Police and Improvement (Scotland) Act, 1862, Amendment Act:

The latter is an Act of 1868. See further the note to s. 5.

"Lands and heritages" has the same meaning in this Act as in the Act of the seventeenth and eighteenth year of the reign of her present Majesty, chapter ninety-one, intituled "An Act for the valuation of lands and heritages in Scotland":

"Company" means any person, persons, company, or companies, carrying on the business of a gas company:

"Shareholder" means shareholder or holder of stock of any gas company whose works may be acquired by the commissioners of any burgh under the provisions of this Act:

"Annuity" means any annuity payable under this Act:

"Annuitant" means any person entitled to and holding an annuity payable under the provisions of this Act:

"Sheriff" includes sheriff substitute:

"Clerk," "treasurer," and "collector" mean the clerk, treasurer, and collector respectively who may be appointed by the commissioners of any burgh which shall adopt the provisions of this Act.

I.—ADOPTION OF THE ACT.

Town council or commissioners of police may resolve that this Act shall be adopted, and cause such resolution to be published.

4. It shall be lawful for the town council in any burgh in which there is a town council, and for the commissioners of police in any other burgh, by a majority of the members who are present at a meeting of such town council or commissioners especially called for the purpose, to resolve that this Act shall be adopted in and applied to the burgh, and to appoint a day not earlier than the third and not later than the thirtieth lawful day after the completion of the then next ensuing annual election of councillors or commissioners of police, as the case may be, for the burgh, for holding a second special meeting to resume consideration of such resolution; and a copy of any minute containing such resolution and appointment shall be inserted once in each newspaper published in the burgh one month at least before such next annual election; and if there be no newspaper published in the burgh, a copy of such minute shall be delivered or transmitted through the post office to each elector and to the sheriff clerk and clerk of the peace of the county within which the burgh is situated, and shall be inserted once in a newspaper published in such county, or in an adjoining county, one month at least before such next annual election.

If resolution approved, this Act to be adopted, and minute to be registered in sheriff court books.

5. No such resolution as in the preceding section mentioned shall have any validity unless approved by a majority of two-thirds at least of the members of the town council or commissioners of police, as the case may be, who are present at such second special meeting or at any adjourned special meeting (of which adjourned special meeting ten days notice in writing shall be given to each member of the town council or commissioner of police, as the case may be); and in the event of such approval the town council or commissioners shall not proceed to carry the same into effect until after the expiration of one month from the date of the meeting at which such resolution was approved, and during such month such resolution, as so approved of, shall be advertised once at least in each week in each newpaper published in the burgh, and if there be no newspaper published in the burgh, in some newspaper circulating in the county in which the burgh is situated, and public notice thereof shall also be given by means of placards posted in public places within the burgh; and if before the expiration of such month a remonstrance in writing by twenty or more ratepayers against carrying into effect such resolution, or any part thereof, be lodged with the town clerk or clerk of the commissioners of police, as the case may be, such resolution shall not be carried into effect unless confirmed by a majority of the ratepayers qualified and voting at a poll to be taken, and upon such remonstrance being lodged as aforesaid the chief or senior magistrate of such burgh shall be bound to direct a poll to be taken in the manner prescribed in regard to polls of householders taken with reference to the adoption of the General Police and Improvement (Scotland) Act, 1862; and the whole enactments and procedure provided in regard to such polls shall, so far as applicable, extend and apply to the poll hereby authorised and directed to be taken. If no such remonstrance is lodged,

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or if such resolution is confirmed by the ratepayers, the sheriff shall authorise the resolution to be registered in the sheriff court books of the county in which the burgh is situated; and the provisions of this Act shall be in force from and after such registration, the date of which shall be held as the date of the adoption of this Act. If such resolution is not confirmed, it shall not be lawful for the town council or commissioners of police again to resolve that this Act be adopted and applied to the burgh before the expiration of three years from the date of the previous resolution.

Although the Act of 1862 and the amending Act of 1868 have been repealed by the Burgh Police (Scotland) Act, 1892, s. 6, they must be considered as remaining in force for the purposes of this Act, and a special list or roll of householders should be prepared by the lands valuation assessor under s. 24 of the Act of 1862, and s. 3 of the Act of 1868. It is understood that this course was followed in the burgh of Dunfermline in the year 1896.

II.—INCORPORATION OF ACTS.

8 & 9 Vict. c. 19, and 23 & 24 Vict. c. 106, incorporated.

6. The Lands Clauses Consolidation (Scotland) Act, 1845, and the Lands Clauses Consolidation Acts Amendment Act, 1860, shall, except the provisions thereof with respect to the purchase and taking of lands otherwise than by agreement, and with respect to the entry upon lands by the promoters of the undertaking, be incorporated with and form part of this Act.

Part of 10 & 11 Vict. c. 16, incorporated.

The provisions of the Commissioners Clauses Act, 1847, with respect to the mortgages to be executed by the commissioners, shall, except sections eighty-four and eighty-five, and except where expressly varied by this Act, be incorporated with this Act, and applied to the money borrowed and mortgages granted under the powers of this Act.

10 & 11 Vict. c. 15, incorporated.

The Gasworks Clauses Act, 1847, except the clauses thereof with respect to the amount of profit to be received by the undertakers when the gasworks are carried on for their benefit, shall, except where the same is at variance with the provisions of this Act, be incorporated with and form part of this Act.

See note to s. 3 of the Gasworks Clauses Act, 1871, *ante*, p. 220.

As to charge and control of carriageways and footways, see Burgh Police (Scotland) Act, 1903, s. 104 (2) (c).

The several words and expressions to which by the Acts partially incorporated with this Act meanings are assigned shall in this Act have the same respective meanings, unless there be something in the subject or context repugnant to such construction: Provided always, that in the Acts partially incorporated with this Act, and also in this Act the expressions "the undertakers" and "the commissioners" shall mean the commissioners acting in the execution of this Act; the "undertaking" shall mean the gasworks, business, property heritable and moveable, plant, pipes, meters, and other assets of any company, to be purchased by and vested in the commissioners under the provisions of this Act; the word "street" shall mean and include street, highway, quay, wharf, bridge, railway crossing, bridleway, footway, carriageway, side pavement, turnpike, statute labour, or other road, thoroughfare, lane, passage, square, court, or place within any burgh brought under the provisions of this Act ; and the word " lands " shall include any servitude, right, or privilege in, over, or affecting lands.

III.—THE COMMISSIONERS ; THEIR PROCEEDINGS.

Commissioners for executing Act.

7. The commissioners for executing this Act in any burgh in which the same shall be adopted shall be,—

(1.) In any burgh having a town council, the town council ;

(2.) In any other burgh, the commissioners of police.

By s. 8 of the Town Councils (Scotland) Act, 1900 (63 & 64 Vict. c. 49), it is provided : "In any burgh the whole rights, powers, authorities, duties, liabilities, debts, officers and servants (a) of commissioners under the Burgh Police (Scotland) Act, 1892, and (b) of any body of police, gas or water commissioners, consisting exclusively of members of the town council, and (c) of the burgh local authority under the Public Health (Scotland) Act, 1897, and the whole lands, works, and other assets vested in them respectively shall, in so far as this has not already been effected, be transferred to, imposed on, and vested in the town council. . . ." See *Blairgowrie Commissioners* (1902), 4 F. 72; *The Magistrates of Leslie* v. *Archibald* (1904), 41 S. L. R. 482.

Power to commissioners to appoint committee.

8. The commissioners may from time to time appoint a committee of their number (to be called " The Gas Committee ") for the execution of any of the purposes of this Act, and may appoint a convener of such committee, and may from time to time remove any member of such committee, and appoint another commissioner in his room, and may delegate to any such committee such of the powers and authorities of the commissioners as the commissioners think fit, and where such powers and authorities are not specially limited and defined by the commissioners, every such committee shall have and may exercise all powers and authorities necessary to enable them to transact the business committed to them, and the acts and proceedings of any such committee within the limits of such delegation shall be deemed the acts and proceedings of the commissioners ; and the quorum of any such committee shall, unless where otherwise declared, be three, and the convener thereof shall be chairman ; and the commissioners may from time to time make such regulations as they think fit for the guidance of any such committee.

Two or more burghs may amalgamate.

9. It shall be lawful for the town councils or commissioners of police of two or more burghs who have adopted this Act to amalgamate for the purposes of this Act, and on such amalgamation the committees, when appointed by them, shall be called " The Joint Gas Committee " ; and the joint gas committee shall have exercise and enjoy all the powers and authorities within the area of the combined burghs which are by this Act conferred on the commissioners of any single burgh.

Meetings of committee.

10. Every committee appointed by the commissioners may meet from time to time and may adjourn from place to place as they think proper for carrying into effect the purposes of their appointment ; and at all

Sect. 10. meetings of the committee one of the members present shall, in the absence of the convener, be appointed chairman, and all questions shall be determined by a majority of the votes of the members present, and in case of an equal division of votes the chairman shall have a casting vote in addition to his vote as a member of the committee.

Vacancies not to invalidate acts of commissioners.

11. No proceeding of the commissioners or of any committee shall be invalidated or be illegal in consequence of there being any vacancy or vacancies in the number of commissioners at the time of such proceeding.

Minutes of proceedings.

12. The commissioners shall cause entries of the proceedings of the commissioners, and of every committee appointed by them, with the names of the commissioners who shall attend each meeting, to be duly made from time to time in books to be provided for the purpose, which shall be kept by the clerk, under the superintendence of the commissioners; and every such entry shall be signed by the chairman of the meeting at which the proceedings took place; and such entry so signed, or a copy thereof certified by the clerk, shall be received as evidence in all courts, and before all judges justices and others, without proof of such meeting having been duly convened or held, or of the persons attending such meeting having been or being commissioners or members of committee respectively, or of the signature of the chairman, or of the fact of his having been chairman, all of which last-mentioned matters shall be presumed until the contrary is proved; and such books shall at all reasonable times be open to the inspection of any of the commissioners, or of any mortgagee of the property of the commissioners or of any annuitant.

Contract for supply of gas not to disqualify commissioners.

13. No person shall be disqualified from being, continuing, or acting as a commissioner by reason of his being concerned in any contract entered into with the commissioners for the supply of gas, or of his being a mortgagee of the commissioners or an annuitant.

Liability for payment of rates not to disqualify.

14. No person liable under this Act in payment of rates or other consideration in respect of a supply of gas shall on that account, or on account of being a commissioner, be disqualified from acting as a justice of peace or sheriff, or exercising any judicial or other function in the carrying out of this Act.

Books and accounts to be kept.

15. The treasurer shall keep separate and distinct books and accounts altogether apart from and unconnected with the other accounts and books of the commissioners, and such books and accounts shall contain a full and accurate record of all moneys received and paid by the treasurer or the servants of the commissioners under the powers and provisions of this Act.

Auditor to be appointed.

16. On or before the first day of May in every year after this Act shall be adopted by a burgh, the commissioners shall apply to the sheriff, and the sheriff shall appoint for the financial year then current an auditor (being a person well skilled in accounts, and not being one of the commissioners, or holding office under them), to audit the

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accounts of the commissioners, and such auditor shall continue in office until superseded by the appointment of another, and shall be allowed such reasonable remuneration as shall be fixed by the sheriff; and in case in any year the office of such auditor shall, before such accounts have been audited by him, become vacant by death, or from any other cause, the sheriff shall from time to time appoint an auditor to supply such vacancy; and the whole books accounts vouchers and documents of the commissioners in relation to their undertaking shall be laid before the auditor for the purpose of such audit.

Accounts to be balanced.

17. The accounts to be kept by the treasurer shall be brought to a balance on the fifteenth day of May in each year for the year immediately preceding, and shall be audited within thirty days thereafter, and shall be submitted along with the auditor's report to a general meeting of the commissioners, which shall be held upon the second Monday of July annually, at which meeting the accounts shall be examined, and an abstract statement and account, authenticated by the docquet and subscription of the chairman of the meeting and the clerk shall be printed, and a copy thereof shall be inserted once in each newspaper published in the burgh within ten days of the date of such general meeting, or if there be no newspaper published in the burgh, a copy of such abstract statement and account shall be inserted once in a newspaper published in the county in which the burgh is situated, or in an adjoining county. The commissioners shall also keep printed copies of such abstract statement and account at their office, and sell the same to any applicant at a price not exceeding one shilling for each such copy.

IV.—GENERAL POWERS AND OBLIGATIONS OF COMMISSIONERS.

Commissioners may erect gasworks and supply public and private lights in certain cases.

18. The commissioners may (subject to the provisions of this Act) erect, lay down, improve, extend, and maintain gasworks, gasometers, and pipes for the distribution of gas, and execute all such works as may be necessary for the efficient manufacture and supply of gas for public and private purposes; and may purchase, acquire, and hold lands and other property for these purposes, and may carry on any such operations and business as are usually carried on by gas companies.

Provided, that the commissioners shall not manufacture or store gas or any residual products, upon any lands without the previous consent in writing of the owner, lessee, and occupier of every dwelling-house situate within three hundred yards of the limits of such lands, or until the commissioners shall have made a return to the Board of Trade setting forth the description and extent of such lands. But this proviso shall not apply to lands upon which gas or residual products are manufactured or stored at the date of the adoption of this Act.

The provisions of this section are, by the Burgh Gas Supply (Scotland) Act, 1893 (*post*, p. 981), "modified and altered to the following effect, viz.: It shall no longer be necessary to make the return to the Board of Trade required by the recited Act, but before proceeding with such manufacture or

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storage the commissioners shall give notice in writing to every owner, lessee, and occupier of every dwelling-house situate within three hundred yards of the limits of the land in question and by advertisement published once a week for two weeks in any newspaper circulating within the burgh, of their intention to proceed with such manufacture and storage, and in the event of any owner, lessee, or occupier refusing or delaying to give the consent provided for in the recited Act for more than ten days after the last date of publication of such advertisement, the sheriff may, on the application of the commissioners, and after such investigation and inquiry as he may deem necessary, by a deliverance under his hand find and declare that such consent may be dispensed with, and such deliverance shall be final and not subject to review, and the sheriff shall make such finding as to the expenses of the application as shall seem to him just in the circumstances. It shall not be in the power of the commissioners to renew such application until the expiration of a period of twelve months from the date of the deliverance. In this section the word 'sheriff' shall not include sheriff substitute."

Sale of superfluous lands.

19. The commissioners may sell and dispose of any lands which are vested in them, or which they are authorised to purchase, and which shall not be required for the purposes of this Act, and the provisions of the Lands Clauses Consolidation (Scotland) Act, 1845, sections one hundred and twenty-one to one hundred and twenty-five (both sections inclusive), shall apply to any such sale; and the commissioners may also from time to time sell and dispose of any works, buildings, or erections on any lands belonging to them which shall not be required for the purposes of this Act.

Commissioners may purchase gas-works.

20. Where there is a company not incorporated by Act of Parliament, or authorised by provisional order confirmed by Act of Parliament, supplying gas within a burgh, the commissioners may, subject to the provisions of this Act, buy from such company, and such company, if formed or registered under the Companies Act, 1862, with the sanction of a special resolution in terms of that Act, and if not so formed or registered, with the consent of a majority of three-fourths in value of the shareholders or members of such company, present either personally or by proxy at a meeting specially convened for the purpose, may sell and transfer to the commissioners, on such terms as may be agreed on between the commissioners and the company, the undertaking of such company, and all the rights powers and privileges, and all or any of the lands premises works, and other property of the company, but subject to all liabilities attached to the same at the time of purchase.

More than three-fourths of the shareholders of an unincorporated company supplying a burgh with gas, entered into an agreement with the police commissioners of the burgh to sell the property of the company to the commissioners. The burgh had not, at the date of the agreement, adopted the Burgh Gas Supply Act, but it subsequently did so, and the agreement stated that the Act was to be adopted. Two shareholders, who had not assented to the agreement, brought an action for reduction of the agreement against the company, and the police commissioners :—*Held*, (1) that the Act was to be taken as having been adopted by the burgh at the date of the agreement even in a question with shareholders not consenting to the agreement; and (2) that as three-fourths of the shareholders had, in terms of the Act, consented to the sale of the company's property, the pursuers had no right to object to the sale either under their contract of co-partnery or at common law. The defenders were therefore assoilzied (*Browns* v. *Kilsyth Police Commissioners* (1886), Ct. of Sess. Cas., 13 Rettie, 515).

Provisions for purchase.

21. Where there is a company not incorporated by Act of Parliament, or authorised by provisional order confirmed by Act of Parliament, supplying gas within a burgh, the commissioners, before they shall exercise any of the powers conferred by this Act shall give notice to such company that they are willing to buy or to treat for the purchase of the undertaking of such company, and of all the rights powers and privileges, and all the lands, premises, works, and other property of the company, and if such company shall consent, in manner provided by the last preceding section, to sell the same, the commissioners shall purchase the undertaking on terms mutually agreed upon or to be fixed by arbitration in the manner provided by the Lands Clauses Consolidation (Scotland) Act, 1845, respecting matters thereby directed to be settled by arbitration ; and if such company shall refuse to sell the same, or shall not within two calendar months after the service of such notice return any answer, the commissioners may present a petition to the sheriff stating the facts, and the sheriff shall, on being satisfied by evidence of the facts as stated, decern accordingly, and on such decree being pronounced the commissioners shall have and may exercise all the powers conferred by this Act.

Consideration for gasworks of any company if purchased.

22. The consideration to be paid by the commissioners for the purchase of the undertaking of any gas company under the powers of this Act may be either a capital sum of money or annuities, or partly a capital sum of money and partly annuities, as may be agreed upon between the commissioners and the company, but the commissioners shall not pay any such consideration either in the shape of a capital sum or annuities until the company selling their undertaking shall have delivered to the commissioners a valid conveyance thereof duly stamped and executed: Provided, that such annuities shall be limited to expire within forty years from the date of the purchase.

Annuities to vest in shareholders of company.

23. In the event of the agreement between the commissioners and the company being for payment by way of annuity, the following provisions shall have effect : firstly, the amount of the annuity, as the same shall be fixed by agreement or settled by arbitration in the manner herein-before provided, shall be payable in every year on such day or days yearly or half-yearly as may be agreed upon between the commissioners and the company, or settled as herein-before provided ; secondly, the said amount shall be paid in the form of annuities, which shall be called by the name of the burgh issuing the same, and which shall vest in and belong and be paid to the several persons, their executors administrators or assignees, who at the date of the agreement to purchase the undertaking of the company were shareholders in the company, according to their respective rights and interests in the share capital of the company, subject to the following provisions ; viz.,

Annuity certificates to be granted.

(A.) The commissioners shall, at their own expense, grant and issue to every shareholder of the company, or to his executors, administrators, or assignees, on delivery to the commissioners

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of the certificate, or on production of other evidence of the share or stock or interest held by him in the capital of the company, annuity certificates in the form of the Schedule (A.) to this Act for the amount of the annuities to which such shareholder is entitled under the provisions of this Act:

Amounts for which certificates shall be issued.

(B.) The annuity certificates issued by the commissioners to any person entitled thereto shall be so many, and each of them for such sum, but not exceeding in the aggregate the whole amount of his annuities, as he by notice in writing to the commissioners shall require: Provided that if or so far as any person does not require any particular number of certificates to be issued to him, the commissioners shall issue to such person one or more certificates as they shall think fit:

Certificates to be numbered and renewed.

(C.) The annuity certificates shall be numbered in arithmetical progression, beginning with No. 1, and every annuity certificate shall be distinguished by its appropriate number; and the annuity certificates shall be renewed by the commissioners when lost, worn out, or damaged, on production to them, or their clerk or treasurer, of evidence of the right of the annuitant requiring such renewal; and if in any case the commissioners shall not be satisfied with the evidence offered by any annuitant, he may appeal to the sheriff, who shall decide summarily what evidence is requisite, and whose decision shall be final; and for every such renewed certificate the commissioners may demand any sum not exceeding two shillings and sixpence:

Register of annuities.

(D.) The commissioners shall keep a book called "The Register of [*name of burgh*] Gas Annuities," and enter therein from time to time, in alphabetical order, the names and designations of the several annuitants respectively entitled to the annuities, and the respective amounts of their annuities:

Annuities personal estate.

(E.) The annuities shall be movable or personal estate, and transmissible as such:

Annuities may be transferred.

(F.) Every annuitant may sell and transfer all or any of his annuities; and every such transfer shall be by deed duly stamped, in which the consideration shall be truly stated, and such deed may be in the form of the Schedule (B.) to this Act, or to the like effect:

Transfer of annuities to be registered.

(G.) Every such transfer, when duly executed, shall be delivered to the commissioners, and kept by them, and they shall keep a book called "The Register of Transfers of the [*name of burgh*] Gas Annuities," and shall enter every such transfer therein, and shall endorse such entry on the transfer, such endorsement to be signed by the treasurer or clerk, and shall, on demand, deliver a new certificate to the transferee; and

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for every such entry of a transfer with such endorsement and certificate the commissioners may demand any sum not exceeding two shillings and sixpence; and on the request of any transferee an endorsement of the transfer to him shall be made on the certificate transferred, instead of a new certificate being granted; and such endorsement, being signed by the treasurer or clerk, shall be considered in every respect the same as a new certificate; and until such transfer be so delivered to the commissioners the transferee shall not be entitled to receive any part of the annuities transferred:

Closing of transfer books.

(H.) The commissioners may close the register of transfers of annuities for any period not exceeding fourteen days in each year; and any transfer made during the time when such register is closed shall, as between the commissioners and the transferee, but not otherwise, be held as made after that time:

Transmission of annuities by other means than transfer to be authenticated by a declaration.

(I.) If the right to any annuity becomes transmitted in consequence of the death or bankruptcy or insolvency of any annuitant, or in consequence of the marriage of a female annuitant, or by any lawful means other than by a transfer according to the provisions of this Act, such transmission shall be authenticated by a declaration in writing as hereinafter provided; and until the transmission be so authenticated, no person claiming by virtue thereof shall be entitled to receive any part of the annuity transmitted:

Contents of declaration.

(J.) Every such declaration shall state the manner in which and the party to whom the annuity is transmitted, and shall be made and signed by some credible person before a justice of the peace or a sheriff; and such declaration shall be left with the commissioners, and thereupon they shall enter the name of the person entitled under such transmission in the register of annuities, and for every such entry the commissioners may demand any sum not exceeding one shilling:

Contents of declaration in cases of transmission by marriage or will.

(K.) If the transmission be by virtue of the marriage of a female annuitant, the declaration shall contain a copy of the register of such marriage, or other particulars of the celebration or effecting thereof, and shall declare the identity of the wife with the holder of the annuity; and if the transmission be by virtue of any will or testamentary instrument, or by intestacy, the confirmation or testament testamentar, or testament dative, or the probate or letters of administration, or an official copy or extract thereof, shall, with the declaration, be produced to the treasurer or clerk, and upon such production in either of those cases the treasurer or clerk shall make an entry of the declaration in the register of transfers of annuities:

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Commissioners not bound to regard trusts.

(L.) The commissioners shall not be bound to see to the execution of any trust, whether expressed, implied, or constructive, to which any annuity may be subject; and the receipt of the person in whose name any annuity stands in the register of annuities shall from time to time be a sufficient discharge to the commissioners for any money payable in respect of such annuity, notwithstanding any trust to which the same may then be subject, and whether or not the commissioners have had notice of such trusts, and the commissioners shall not be bound to see to the application of the money paid upon such receipt:

Commencement and payment of annuities.

(M.) The annuities shall be computed from such day in each year as may be agreed upon between the commissioners and the company, and shall be paid at the office of the commissioners or their treasurer in the burgh from which they were issued in net money, clear of all deductions whatsoever (except income or property tax, or other tax in the nature thereof legally chargeable thereon):

Power to redeem annuities by agreement.

(N.) The commissioners may from time to time, by agreement with any annuitant, purchase or redeem all or any of his annuities; and when any annuity is so redeemed, the commissioners shall take a transfer of such annuity which shall set forth the price paid, and an entry of the redemption thereof shall be made in the register of the burgh's gas annuities, and thereupon the redeemed annuity shall be wholly extinguished:

Annuities recoverable by action.

(O.) If any annuity or part of an annuity being payable be not paid on demand thereof in writing made by any annuitant or his agent to the commissioners, the annuitant may sue for and recover the same from the commissioners in the sheriff court, with interest at the rate of five pounds per centum per annum till paid, and expenses:

Annuitants to be preferential creditors for annuities.

(P.) The annuitants shall be creditors of the commissioners for payment of the annuities respectively herein-before directed to be paid to them, and of the interest thereon and expenses incident thereto; and the said annuities, and the interest on moneys authorised to be borrowed under the authority of this Act, are hereby constituted primary and preferential burdens and liens on the rates and charges leviable by and on the other revenues of the commissioners under this Act.

Actions not to abate.

24. No action suit prosecution or other proceeding whatsoever commenced either by or against the company in relation to the undertaking of the company to be vested in the commissioners as aforesaid previous to such vesting taking place, shall abate or be discontinued or be prejudicially affected thereby, but all such actions suits precautions and other proceedings shall continue and take effect, either in favour of or

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against the commissioners, in such and the like manner as the same would have continued and taken effect in relation to the company if such vesting in the commissioners had not taken place.

Company to cease to supply gas.

25. From and after the date when the commissioners shall become vested with the undertaking of any company under the provisions of this Act, the company shall cease to manufacture, sell, and supply gas.

Ultimate dissolution of company.

26. From and after the date when the commissioners shall become vested with the undertaking of any company, the company shall subsist only for the purpose of securing the annuity certificates being granted to the shareholders for their respective annuities as herein-before provided, for winding up the affairs of the company, and carrying into effect the purposes of this Act, so far as relating to the company; and the directors of the company in office at the date of such vesting, and the survivors of them, shall continue without re-election to hold office, and shall have full power and authority to take all the necessary proceedings for carrying into effect the several purposes hereinbefore mentioned, and on the fulfilment of the said purposes the company shall be dissolved.

V.—BORROWING POWERS OF COMMISSIONERS.

Power to borrow on mortgage.

27. It shall be lawful for the commissioners to borrow on mortgage any money which may be necessary for the purchase or erection of gasworks for the burgh, and to grant mortgages of any rates or charges leviable by them under the provisions of this Act, in security of the payment of the money so borrowed and interest thereon; and if, after having borrowed any sum of money, the commissioners pay off the same otherwise than by a sinking fund, it shall be lawful for them again to borrow the amount so paid off, and so from time to time.

Form of mortgage.

28. Every mortgage to be granted by the commissioners shall be by deed duly stamped, in which the consideration shall be truly stated, and may be in the form of the Schedule (C.) to this Act annexed.

Mortgages may be accompanied with interest warrants.

29. It shall be lawful for the commissioners to issue along with any such mortgage, and during the period of any postponement of the term of payment thereof, interest warrants in the form of the Schedule (D.) to this Act annexed, or to the like effect, signed by the treasurer, for the periodical payment of the interest to become due on the principal sums thereby secured during the period for which such mortgage is intended to subsist; and the delivery to the commissioners or their treasurer, or to any person on their behalf, of any such interest warrant, duly stamped as a receipt, shall be a valid and sufficient discharge to the commissioners for the interest in respect of which the same was issued.

Commissioners may borrow on

30. It shall be lawful for the commissioners to take from any banking company credit on a cash account, to be opened and kept with such banking company in the name of the commissioners, according to the

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credit of a cash account.

usage of bankers in Scotland, to the extent required as aforesaid, and to make and grant mortgages of any rates or charges leviable by them under the authority of this Act, in security of the payment of the amount of such credit, or of the sums advanced from time to time on such cash account, with interest thereon.

Manner in which mortgages and orders on bank account to be signed and executed.

31. Every mortgage to be granted by the commissioners may be written or partly written and partly printed, and shall be signed by at least two of the commissioners and the treasurer ; and all drafts or orders on the cash account before-mentioned shall be signed by any two of the commissioners authorised so to do, and shall be countersigned by the treasurer : Provided always, that no commissioner or treasurer shall, by his subscription of any such mortgage draft or order, be, or be held to have rendered himself individually or personally liable for the payment of any money so borrowed, drawn, or received, or any interest thereon, or of any sums whatsoever in respect thereof.

Arrears may be enforced by appointment of a judicial factor.

32. It shall be lawful for any of the following persons to apply by summary petition to the court of session in either division thereof, or in the time of vacation to the lord ordinary on the bills, for the appointment of a judicial factor to manage the undertaking of the commissioners, with the powers after-mentioned, and for such court or lord ordinary to appoint a judicial factor accordingly ; that is to say,

1. Any annuitant or mortgagee having an annuity or interest on a mortgage in arrear to the amount of not less than one hundred pounds ; or
2. Any mortgagee with principal or principal and interest in arrear to the amount of not less than five hundred pounds ; or
3. Any annuitants or mortgagees having annuities, or interest on mortgages in arrear to the amount of not less than two hundred pounds in the aggregate ; or
4. Any mortgagees with principal or principal and interest in arrear to the amount of not less than one thousand pounds in the aggregate.

Provided—

(a.) The arrear shall have existed for two months ; and

(b.) The arrear shall have existed for twenty-one days after a demand for payment made in writing ; and

(c.) The arrear with interest and expenses shall not have been paid before the application is advised.

An interlocutor pronounced under this section appointing a judicial factor shall not be subject to review or appeal.

Power and duties of judicial factor.

33. A judicial factor appointed under the preceding section shall, on finding security in common form, have and exercise all the powers and rights and be subject to all the obligations of the commissioners whose undertaking he is appointed to manage, and the judicial factor shall

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continue till all arrears, whether of principal, annuities, or interest, due at the date of his appointment, and all such arrears subsequently arising, and all the expenses of the factory, including the expenses of the appointment, shall be paid, whereupon it shall be lawful for the commissioners to apply for the recall of that appointment of the judicial factor to the court of session in either division thereof, or in time of vacation to the lord ordinary on the bills, who may recall such appointment accordingly.

Mortgages to be personal estate.

34. All mortgages to be granted by the commissioners under the authority of this Act, and all money to be advanced and lent on the security of any rates or charges leviable by them, shall be movable or personal estate, and transmissible as such.

Discharge of mortgages.

35. Any person entitled to any mortgage granted by the commissioners under the authority of this Act may discharge the same and his right and interest therein, in favour of the commissioners; and every such discharge may be written, or partly written and partly printed, on the mortgage, and may be according to the form contained in the Schedule (E.) to this Act, or to the like effect; and such discharge, when signed by the person entitled to such mortgage and duly stamped, shall be valid and effectual to all intents and purposes.

Providing for regular payment of annuities.

36. The commissioners may from time to time apply any moneys borrowed under the authority of this Act with a view to the regular payment of annuities as they fall due: Provided, that they shall as soon as may be replace any moneys so applied out of any rates or charges which they are empowered to impose and levy under this Act.

Application of money borrowed.

37. The several sums borrowed by the commissioners under the authority of this Act shall be applied in the payment of the mortgage and other debts of the company, and in carrying the other purposes of this Act into execution; but the commissioners shall not apply any of the money so borrowed to the maintenance of the works acquired or to be constructed by them, or to the expenses of management, or to any other expenses properly payable out of revenue.

Guarantee rate.

38. It shall be lawful for the commissioners and they are hereby required from time to time to fix, impose, and levy such rate, to be termed "The Gas Contingent Guarantee Rate," as may be required to pay any annuities and any interest due thereon, and the interest of money borrowed or to be borrowed under the provisions and for the purposes of this Act.

See *Milne* v. *Commissioners of Lockerbie*, cited *post*, under s. 41.

Assessment and levy of rate.

39. The gas contingent guarantee rate shall be imposed levied and collected on property situated within the burgh, on the requisition of the commissioners, by the authority in the burgh empowered by law to levy any assessment for police purposes therein, along with and in the same manner in all respects and from the same descriptions of persons and property as such assessment for police purposes; and the amount of such rate, when imposed levied and collected by such authority, shall be paid over to the commissioners for the purposes of this Act. All the

Sect. 39. powers enactments and provisions of law in force for the time with respect to the levying payment and recovery of assessments for police purposes within the burgh shall apply to the levying payment and recovery of the gas contingent guarantee rate by this Act authorised to be raised.

Sinking fund. **40.** The commissioners shall, in every year after the second year from their commencing to supply gas, set apart as a sinking fund a sum of not less than one-fortieth part of the sums borrowed until such sums be respectively repaid, and such sinking fund shall from time to time be applicable to the redemption of mortgages and annuities, and to no other purpose, and shall be lodged in any bank in Scotland incorporated by Act of Parliament or royal charter, or invested in Government or on heritable securities in the name of " (*name of burgh*) Gas Commissioners," at the discretion of the commissioners, until the same be applied for the purposes before specified.

VI.—GENERAL PROVISIONS.

Commissioners to fix rates for gas. **41.** The commissioners shall from time to time fix the price to be paid for gas to be supplied during any succeeding year or half year, and until such price be altered by the commissioners the price so fixed shall remain in force, provided that the price shall be such as will, as nearly as can be estimated, raise sufficient income to discharge all the costs and expenses of and incident to the manufacture and distribution of the gas made, together with the interest on all money borrowed in respect of the works, and to provide the sinking fund required by this Act, and to provide for a depreciation and renewal fund sufficient to maintain the works in perpetuity and for all charges incident to the occupation of such works; and the moneys received in respect of and incident to the manufacture and distribution of gas shall be applied to such purposes only, and any balance at the termination of any year shall be carried to the debit or credit of the succeeding year: Provided also, that the prices charged shall be the same to all consumers under like circumstances, and the revenue of the gasworks shall be credited with an amount for the gas consumed for public purposes, calculated to the rates charged to private consumers, which amount shall be a charge upon the rates leviable for public lighting.

Generally speaking, when the gas supply is in the hands of a local authority in England, surplus profits go to the credit of the borough or district fund, and are thus applied in reduction of local taxation. The policy of the Act in the text is different. See INTRODUCTION.

The gas commissioners are entitled under ss. 38, 41: (1) in fixing the price of gas, to consider whether a higher or lower rate of charge will yield the greater return, and to adopt such rate as, in their judgment, will yield the greatest return from gas consumers if that is necessary to prevent a deficit; and (2) at the same time to impose a guarantee rate to meet an anticipated deficit on the gas account (*Milne* v. *Commissioners of Lockerbie* (1894), 21 R. 940).

Commissioners may contract to light adjoining burghs.

42. The commissioners may contract with any local authority adjacent to the burgh to supply gas within their respective limits, provided that there is no town council nor commissioners of police nor any gas company entitled (at the date of the passing of this Act) to supply gas within such limits.

Supply of adjacent districts.

43. The commissioners may supply gas to any district adjacent to the burgh not being at the time of the adoption of this Act within the area of supply of any incorporated company, or company authorised by provisional order confirmed by Act of Parliament, town council, or other commissioners.

Dispensing with notice as to interference with streets.

44. It shall not be necessary for the commissioners, before they proceed to break up for the purposes of this Act any street under the control of the commissioners, to give any notice of their intention so to do.

Obligation on commissioners as to supply of gas.

45. The commissioners shall, on the request in writing of the owner or occupier of any building or part of a building within one hundred yards of which any main of the commissioners is laid, furnish to such owner or occupier a supply of gas for such building or part of a building on the following conditions; viz.,

First. That the person making such request do, if required by the commissioners, give to them, at his own expense, reasonable security for payment for the gas to be supplied;

Secondly. That such person do pay the cost of and the expenses of laying all necessary pipes for such supply beyond the line of street or road where the main of the commissioners is placed;

Thirdly. That such person do, if required by the commissioners, pay in advance the estimated amount of such cost and expenses;

and any dispute as to any matter arising under the present section shall be settled, upon the application of either party, by the sheriff, whose decision thereof shall be final: Provided that if the commissioners neglect or refuse to furnish a supply of gas to such owner or occupier, who has fulfilled or is ready to fulfil the conditions herein-before mentioned, they shall be liable to a penalty not exceeding forty shillings for each day during which such default continues.

Gas pipes may be put in buildings.

46. Subject to the provisions contained in this Act, and the Acts partially incorporated herewith, the commissioners may lay any pipe, branch, or other necessary apparatus, with the consent of the owner and occupier of any building, for the purpose of lighting the same or any adjoining building, and may, with the like consent, provide and set up any apparatus necessary for securing to any building a proper and sufficient supply of gas, and for measuring and ascertaining the extent of such supply.

Gas to be consumed by meter.

47. Every consumer of gas supplied by the commissioners shall consume the gas by meter; and every meter measuring the consumption

Sect. 47. of gas, whether such meter is provided by the consumer or the commissioners, shall be subject to the inspection and approval of the officers and servants of the commissioners.

Power to enter buildings to inspect meters, etc., and for ascertaining quantities of gas consumed.

48. Any officer appointed by the commissioners may at all reasonable times enter any building or land lighted with gas supplied by the commissioners, in order to inspect the meters, fittings, and works for the supply of gas, and for the purpose of ascertaining the quantity of gas consumed or supplied; and if any person hinder such officer as aforesaid from entering and making such inspection as aforesaid at any reasonable time, he shall for every such offence forfeit to the commissioners a sum not exceeding five pounds.

Notice to commissioners putting up or removing meters.

49. Before any person shall connect or disconnect any meter through which gas supplied by the commissioners is intended to be or has been registered, he shall give not less than twenty-four hours' notice in writing to the commissioners of his intention to do so, and any person offending against this enactment shall forfeit and pay to the commissioners a sum not exceeding forty shillings.

Repair of meters.

50. Every consumer of gas supplied by the commissioners shall at all times, at his own expense, keep all meters whereby the consumption of such gas is registered in proper order for correctly registering such consumption, in default whereof the commissioners may cease to supply gas through such meters; and the commissioners shall at all reasonable times have access to and be at liberty to take off, remove, test, inspect, and replace any meter at their own expense if the meter be found in proper order, but otherwise at the expense of the consumer.

Power to commissioners to let meters.

51. The commissioners may let for hire any meter and any fittings thereto, on such terms with respect to the repair of such meter and fittings, and for securing the safety and return of the same to the commissioners, as may be agreed upon between the hirer and the commissioners, and such hire shall be recoverable in the same manner as moneys due to the commissioners for gas; and such meters and fittings shall not be subject to any diligence at the instance of the landlord for rent of the premises where the same may be used, nor to be taken in execution under any process of a court of law, or any proceedings in bankruptcy against the persons in whose possession the same may be.

Register of meter to be primâ facie evidence.

52. The register of the meter shall be primâ facie evidence of the quantity of gas consumed.

Power to remove meters and fittings.

53. It shall be lawful for the commissioners after twenty-four hours' notice in writing under the hand of the manager of their works or some other one of their officers to the occupier, or if unoccupied, then to the owner or lessee or the person in charge or reputed to be in charge of any land house or building in which any pipes mains meters or fittings belonging to the commissioners are laid or fixed, and through or in which the supply of gas shall, from any cause other than the neglect or default of the commissioners, be discontinued, to enter such land house or building between the hours of nine in the morning and six in the afternoon, for the purpose of removing, and to remove, such pipes meters or fittings, repairing all damages caused by such entry or removal; and every such notice shall be served by being delivered to the person for whom it is intended, or left at his usual or last known place of abode, or, if such person or his address be not known, then by being affixed on some conspicuous part of such land house or building.

Fraudulently injuring meters, etc.

54. Every person who shall wilfully, fraudulently, or by culpable negligence injure or suffer to be injured any meter or fittings belonging to the commissioners, or shall fraudulently alter or prevent the index to any meter from duly registering the quantity of gas supplied, shall, without prejudice to any other right or remedy for the protection of the commissioners or the punishment of the offender, for every such offence forfeit and pay to the commissioners a sum not exceeding five pounds, and the commissioners may in addition thereto recover the amount of any damages by them sustained, and the commissioners may notwithstanding any contract previously existing, discontinue the supply of gas to the person so offending until the injury is remedied and the amount of the damages is paid.

For preventing wilful waste of gas.

55. If and whenever any person supplied with gas by the commissioners wilfully does or causes or suffers to be done anything in contravention of any of the provisions of this Act, or wilfully fails to do anything which under this Act ought to be done for the prevention of the waste misuse or undue consumption of gas supplied by the commissioners, the commissioners may cut off or stop any pipe by or through which gas is supplied to him, and cease to supply him with gas so long as the cause of injury remains or is not remedied, and also may recover, in any court of competent jurisdiction, from every person so offending, the amount of all loss damage or injury which the commissioners may sustain by reason of any such thing or failure; and the remedies of the commissioners under this enactment shall be in addition to their other remedies in that behalf.

Pressure of gas.

56. All the gas supplied by the commissioners to any consumer of gas shall be supplied at such pressure as to balance a column of water from midnight to sunset not less than six tenths of an inch, and from sunset to midnight not less than eight tenths of an inch in height at the main, as near as may be to the junction therewith of the service pipe supplying such consumer; and any person appointed for the purpose by the sheriff may, subject to the terms of his appointment, from time to time test the pressure at which the gas is supplied, and may for that purpose open any street road passage or place vested in or under the control of any road authority; and the provisions of this Act with reference to the testing of the illuminating power and purity of gas, and to penalties, shall, mutatis mutandis, apply to such testing of pressure.

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Quality of gas.

57. All the gas supplied by the commissioners shall be at least of such quality as to produce from a union jet or other burner approved by the Board of Trade, capable of consuming five cubic feet of gas per hour under a pressure equal to a column of water five tenths of an inch in height, a light equal in intensity to the light produced by fourteen sperm candles of six in the pound burning one hundred and twenty grains per hour.

Commissioners to maintain apparatus to test illuminating power of gas.

58. The commissioners shall, within six months after they begin to supply gas, provide in some convenient part of their works an experimental meter furnished with a union jet or other burner approved by the Board of Trade, capable of consuming five cubic feet of gas per hour, with other necessary apparatus for testing the illuminating power of the gas, and for testing the presence of sulphuretted hydrogen therein, in accordance with the regulations prescribed in Part I. of the Schedule A. annexed to the Gasworks Clauses Act, 1871, and so situate and arranged as to test all the gas supplied by the commissioners, and shall at all times thereafter keep and maintain such experimental meter and apparatus in good repair and working order.

See *ante*, p. 248.

Provision for testing quality of gas.

59. Any five consumers of gas may, by order in writing, appoint some competent person, not being one of themselves, to proceed to the works of the commissioners ; and the person so appointed may, at any reasonable hour in the daytime, on producing the said order, enter on the premises of the commissioners, and in the presence of the superintendent or other officer of the commissioners make experiment of the illuminating power and purity of the gas by means of the experimental meter and other apparatus by this Act directed to be provided in accordance with the rules prescribed in Part II. of the Schedule A. annexed to the Gasworks Clauses Act, 1871 ; and the commissioners and their officers shall afford all reasonable facilities and assistance for making such experiment; and if it shall be proved to the satisfaction of the sheriff, after hearing the parties, that the illuminating power or purity of the gas supplied by the commissioners did not, when so tested as aforesaid, equal the illuminating power or purity by this and the recited Act prescribed, or that the commissioners or their officers refused to afford such reasonable facilities as aforesaid, or hindered or prevented the making of such experiment, the commissioners shall in any such case be liable in such a penalty, not exceeding twenty pounds, as the sheriff shall determine.

See *ante*, p. 249. Where the gas supply is not in the hands of the local authority, see s. 103 of the Burgh Police (Scotland) Act, 1892, *post*, p. 978.

Costs of experiment to be paid according to the event.

60. The costs of such experiment, including the remuneration to be paid to the person making the same, and the costs of the proceedings before the sheriff, shall be ascertained by the sheriff, and, in the event of any penalty being imposed on the commissioners, shall be paid,

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together with such penalty, by the commissioners, but in the event of no penalty being so imposed, such costs shall be paid to the commissioners by the persons complaining.

Recovery of sums owing to commissioners.

61. Where any person fails to pay any gas rent or any rate or any sum whatever due under this Act to the commissioners, the commissioners may recover the same, with costs, including the costs of cutting off the gas, if the same shall have been cut off by the commisioners, by proceedings in any court of competent jurisdiction, and their remedies under this enactment shall be in addition to their other remedies for the recovery thereof.

Contents of summons or warrant.

62. Any summons or warrant issued for any of the purposes of this Act may contain, in the body thereof or in a schedule thereto, several names and several sums.

Recovery of penalties.

63. All penalties under this Act and under the Acts partially incorporated with this Act may be recovered before the sheriff, under the provision of the Summary Procedure Act, 1864, at the instance of any person injured by fault of the commissioners, when the penalty is exigible from the commissioners, otherwise at the instance of the clerk of the commissioners.

SCHEDULES.

SCHEDULE (A.).

FORM OF ANNUITY CERTIFICATE.

No.

This is to certify that A. B. [*name and designation*] is entitled to receive from the gas commissioners of [*insert name of the burgh*] an annuity of pounds, payable on the first day of [*insert date for payment*] in each year, beginning the first payment thereof on the first day of [*insert date*], and so forth for the period of forty years thereafter, and which annuity is preferably secured on the several rates and revenues to be levied and received by the said commissioners under the Burghs Gas Supply (Scotland) Act, 1876.

Dated this day of , one thousand eight hundred and .

[*Signed by two commissioners and treasurer*].

SCHEDULE (B.).

FORM OF TRANSFER OF ANNUITY CERTIFICATE.

I, A. B. [*name and designation*], in consideration of the sum of pounds [*or other consideration as the case may be*], paid to me by C. D. [*name and designation*], do hereby transfer to the said C. D., and his executors, administrators, or assignees, the annuity of pounds secured by annuity

Sched. (B.).

certificate No. [*as the case may be*] of "The [*insert the name of burgh*] Gas Annuities," created under and by virtue of the Burghs Gas Supply (Scotland) Act, 1876, now standing in my name in the books of the gas commissioners of [*insert name of burgh*], with the rights and privileges and subject to the conditions and provisions specified in the said Act. And I, the said C. D., do hereby agree to hold the said annuity subject to the same conditions and provisions. In witness whereof [*insert testing clause according to the form of the law of Scotland*].

SCHEDULE (C.).

FORM OF MORTGAGE.

Mortgage No.

By virtue of the Burghs Gas Supply (Scotland) Act, 1876, we, the gas commissioners acting under the authority of the said Act for the burgh of [*insert the name of the burgh*], in consideration of the principal sum of [*specify amount*] paid by [*name and designation of mortgagee*] to the treasurer to the said commissioners for the purposes of the said Act, do hereby grant, convey, and assign to the said [*name of mortgagee*], and his executors, administrators, and assignees [*as the case may be*], the rates and charges to be levied by the said commissioners, under the authority of the said Act, to hold to the said mortgagee and his foresaids until the said principal sum and the whole interest due thereon shall be fully paid and satisfied; and it is hereby stipulated that the said principal sum shall be repayable on the [*date*], or shall thereafter in virtue hereof remain as a loan to the said commissioners, for the purposes aforesaid, until the expiration of such further term of years and at such rate of interest as shall be specified in a minute or minutes to be indorsed hereon, and signed by the said mortgagee or his foresaids and by the treasurer to the said commissioners, and which minute or minutes are hereby declared and shall be held to be valid and binding, though they may be neither holograph of said mortgagee or his aforesaids, or of the said treasurer, nor tested; and for and in respect of interest on the said principal sum to the said date of repayment first above mentioned (being at the rate of [*specify rate*] per centum per annum), the said commissioners shall pay the several sums contained in the [*state number*] interest warrants bearing the number and date hereof, and delivered herewith, and that at the several times mentioned in such warrants, upon delivery of the same respectively, and such delivery shall be a sufficient receipt and discharge to the said commissioners for the contents of such warrants, declaring that the said mortgagee and his foresaids shall not be entitled to make, and that the said commissioners shall not be bound to recognise or register, any partial assignation of these presents, or of the sums of money, principal or interest, herein contained; and that the said commissioners shall not be liable for any expenses that may be incurred by the said mortgagee or his foresaids for or in relation to the preparation, revision, adjustment, or execution of this mortgage, or of any discharge, renunciation, release, assignation, or minute of postponement or renewal thereof. In witness whereof [*testing clause according to law of Scotland*].

[*Signed by two commissioners and treasurer.*]

Sched. (D).

SCHEDULE (D.).

FORM OF INTEREST WARRANT.

[*Name and burgh*] Gas.

Mortgage No. , dated , 18 .

Interest Warrant—

	£ s. d.
For pounds shillings and pence	
Less income tax	
	£

Payable on eighteen hundred and , at the .

Treasurer.

SCHEDULE (E.).

FORM OF DISCHARGE.

[*Name of burgh*] Gas.

Received from the treasurer to the gas commissioners acting under the Burghs Gas Supply (Scotland) Act, 1876, on their behalf, the sum of , being the principal sum contained in the within mortgage (all interest due thereon having been paid), and the said mortgage is now delivered up as paid.

Dated this day of eighteen hundred and .

BURGH POLICE (SCOTLAND) ACT, 1892.*

(55 & 56 VICT. c. 55.)

Powers, etc. of local authorities under Public Health Act to be transferred to Commissioners.

21. Wherever the boundaries of any burgh have been determined in terms of this Act, the whole powers and duties (including the rights to levy assessments) exerciseable by any local authority acting under the Public Health (Scotland) Act, 1867, and Acts amending the same, within the district or districts comprehended within such burgh shall cease and determine, and the same shall be transferred to and vested in the commissioners under this Act, and all drainage, water, and other works executed in such district or districts by such local authority in the performance of its powers and duties under the said Acts shall be taken over by the commissioners under this Act, who shall be liable for the whole debts and obligations of such local authority applicable to such district or districts; and in the case of difference of opinion as to such debts or obligations the sheriff shall determine the dispute, and his decision shall be final.

See s. 8 of the Town Councils (Scotland) Act, 1900, *ante*, p. 957. The Public Health Act of 1867 has been repealed by the Public Health (Scotland) Act, 1897 (60 & 61 Vict. c. 38) which now takes its place.

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* This Act repeals the Police (Scotland) Acts enumerated in Sched. (I.) (including the Lindsay Act of 1862), except to such extent as they are incorporated by reference in portions of local Police Acts not repealed by this Act.

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Various municipal jurisdictions to cease and to vest in the provost, magistrates, etc.

42. In any burgh where various municipal or police authorities possess jurisdictions and powers within the area of such burgh, in police, *water, gas*, drainage, rating, matters of public health or otherwise, such several jurisdictions and powers, and the whole privileges, rights, and duties exercised in connection therewith, other than those vested in, and possessed and exercised by the provost, magistrates, and town council or commissioners, shall cease and determine, and such jurisdiction and all the powers and duties already existing or conferred by this Act in relation thereto, shall thereafter devolve on and be vested in, and be wholly exercised by the provost, magistrates, and town council or commissioners : Provided always, that where a royal burgh, or a police burgh, or part thereof is included within the parliamentary area of a burgh, this section shall not apply to the effect of uniting such burghs or amalgamating the administration thereof, but without prejudice to any application for such amalgamation under the provisions of section forty-five of this Act.

See now s. 8 of the Town Councils (Scotland) Act, 1900, *ante*, p. 957.

See *Lanarkshire Committee* v. *Magistrates of Rutherglen* (1902), 39 S. L. R. (H. L.) 857, cited in the note under s. 5 of the Burgh Sewerage, etc. Act, 1901, *post*, p. 1023.

Provost, magistrates, etc. to be local authority under Public Health Act.

43. Notwithstanding the provisions of any general Act or local Police Act, the provost, magistrates, and town council or commissioners in every burgh shall be the local authority under the Public Health (Scotland) Act, 1867, within the area of such burgh: Provided that nothing contained in this Act shall prejudice or affect the provisions of section eighty-one of the Local Government (Scotland) Act, 1889, *and if any question shall arise under this proviso, the same, failing agreement, may be determined by the Secretary for Scotland after such inquiry as he shall think fit, and the provisions of section ninety-three, sub-section three, of the last-mentioned Act shall apply to such inquiry.

See the note to s. 5 of the Burghs Gas Supply (Scotland) Act, 1876, *ante*, p. 956. The Public Health (Scotland) Act, 1867, has been repealed by the Public Health (Scotland) Act, 1897 (60 & 61 Vict. c. 38), which now takes its place.

Special powers.

45. Whenever it shall appear to the commissioners of any burgh to which this Act applies that they require additional powers for the better carrying out of the purposes of this Act, and specially powers relating to the supply of *gas or water*, or to the roads and streets, or to drainage or sewers or the utilisation of sewage in addition to the powers conferred by the Public Health Acts, or for the repeal or amendment of any local Acts of Parliament relating to such subjects, or their adaption and adjustment to the provisions of this Act, with such amendments as may be found necessary, or for the repeal of any exemption from rating derived from this or any general or local Act, or to other matters cognate to the purposes of this Act, they may apply to the Secretary for Scotland for a provisional order.

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* Sect. 81 here referred to makes special provisions with respect to special drainage districts and special water supply districts. See *post*, p. 990.

Or whenever it appears desirable to the magistrates and council or the commissioners of contiguous or adjacent burghs that provision should be made for amalgamating the administration of such burghs for all or any of the purposes of this Act or both for municipal purposes and the purposes of this Act, or carrying on jointly such administration or any part thereof by joint committees or otherwise, or for executing jointly any conduits or main sewers, or any other drainage works necessary for the more effectually draining of such contiguous or adjacent burghs, such commissioners or magistrates and council, as the case may be, may make joint application to the Secretary for Scotland for a provisional order.

Two drafts of the order proposed shall be transmitted with every application for a provisional order.

Streets to be lighted.

99. The commissioners shall make provision for lighting in a suitable manner all the streets, and all other places within the burgh which in their judgment should be lighted at the public expense, and shall provide, erect, and maintain such a number of lamps, lamp posts, and lamp irons, and other appurtenances, as may be necessary for that purpose, and shall light, or shall enter into contracts for lighting, and cause to be lighted, such lamps by means of gas, or such other light of an improved kind, subject to the provisions of the Electric Lighting Act, 1882, or any Act or Acts amending or superseding the same, as they may find expedient; and the commissioners are hereby authorised to order the lamp irons, lamp posts, and lamps to be fixed, either upon the sides of the causeways, streets, and roads, or upon the kerbstones of the pavements or footways, or at or upon the rails or in or upon the walls or buildings on the sides of the streets, as they shall think proper, without being liable to any claim for compensation thereanent. The Gasworks Clauses Act, 1847, the Gas and Water Works Facilities Act, 1870, the Gasworks Clauses Act, 1871, and the Gas and Water Works Facilities Act (1870) Amendment Act, 1873, and any Act amending the said Acts, shall, except in or so far as they are expressly varied by this Act, be incorporated with this Act; and the expression "the undertakers" in the said Acts shall mean the commissioners.

Incorporation of all public general Acts relating to gas.

The Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), has been amended by the Electric Lighting Act, 1888 (51 & 52 Vict. c. 12), the Electric Lighting (Scotland) Act, 1890 (53 & 54 Vict. c. 13), and the Electric Lighting (Scotland) Act, 1902 (2 Edw. 7, c. 35). See also the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19). The Private Legislation Procedure (Scotland) Act, 1899 (62 & 63 Vict. c. 47), does not confer on the Secretary for Scotland any power to make provisional orders authorising or regulating the supply of electricity for lighting and other purposes.

As to charge and control of carriageways and footways see Burgh Police (Scotland) Act, 1903, s. 104 (2) (c).

The Gasworks Clauses Acts, 1847 and 1871, will be found *ante*, pp. 147 *et seq.*, and the Gas and Water Works Facilities Acts, 1870 and 1873, at pp. 787 *et seq.*

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NOTE.

The use of oil as an illuminant is not excluded by the terms of the section. When a district committee of a county council, which had adopted the section in the text for a special lighting district, proposed to light a village within it by oil lamps, an interdict against their doing so was refused. Lord McLAREN observed: "It seems to me that in a measure of this kind, intended to apply to large towns and small, and even to mere villages, the district committee would be taking a very inadequate view of its powers and duties if it merely approached the subject of lighting from the point of view, which is the best of all known illuminants? They have to consider which is the most suitable for the requirements of their districts" (*Fleming* v. *Liddesdale District Committee of Roxburgh C. C.* (1897), Ct. of Sess. Cas., 24 Rettie, 281).

100, 101. [*Penalties for breaking lamps, etc.*]

Price to be paid for gas to be ascertained in case of dispute.

102. If the commissioners and the owners of any works authorised by Act of Parliament to supply gas or other light within the burgh, and with whom the commissioners shall be desirous of contracting, shall not agree as to the terms and conditions of the supply, and as to the price to be paid for such supply, then such terms and conditions and price shall be settled by arbitration; and for that purpose the clauses of the Lands Clauses Acts, with respect to the settlement of disputes by arbitration, shall be, and are hereby, incorporated with this Act, and the expression "the promoters" in the said Acts shall, in reference to this Act, mean the commissioners: Provided always, that this enactment shall not apply to any burgh where the supply of gas for public lamps is regulated by a local Act if the provisions of such local Act are inconsistent with this enactment.

Gas to be tested.

103. In order to secure a uniform supply of good gas in the burgh, it shall be lawful for the commissioners, where the gas is not supplied by them, after intimation to the manufacturers of the gas supplied within the burgh, to provide suitable places and instruments for testing the quality and illuminating power of the gas supplied within the burgh; and tests shall be made as often as may be necessary to obtain a fair and true test of the quality and illuminating power of the gas, and the results of such tests shall be final and conclusive of such quality and illuminating power when the tests were so made; and where the gas supplied within the burgh is manufactured by the commissioners, they shall be bound to provide suitable places and instruments for testing the quality and illuminating power of the gas supplied by them within the burgh, and to publish the results at least once a month. Provided always that the person to make the tests shall be appointed by the sheriff on the application of the commissioners, or any seven electors or ratepayers in the burgh, after such notice of the application and after such inquiry as to the sheriff shall seem proper; and the whole expense to be incurred in carrying out this enactment shall be defrayed by the commissioners out of the burgh general assessment.

See ss. 57—60 of Burghs Gas Supply Act, 1876, *ante*, pp. 972 *et seq.*, and *cf.* ss. 28—34 of the Gasworks Clauses Act, 1871, *ante*, pp. 237 *et seq.*

Lighting of common stairs, etc.

104. The owner or owners of common stairs or passages or private courts, or of lands or premises having a right of access by any common stair or passage or private court, shall provide, fit up, and maintain, and renew, in such common stairs, passages, or private courts, all necessary lamps, brackets, and other means of lighting, and all necessary means of extinguishing the light, and shall provide the necessary supply of gas or other light therefor; and such owner or owners shall further, on being required by the commissioners, within seven days next after the service of an order for that purpose, provide and fit up in such common stairs, passages, or private courts, such number of lamps, brackets, and other means of lighting, and all such means of extinguishing the light as the commissioners may determine, and provide the necessary supply of gas or other light, as may be required by the commissioners, and shall maintain, alter, repair, and renew such lamps and brackets to the satisfaction of the commissioners, and in default of compliance with any order of the commissioners under this section, such owner or owners shall, each only in respect of any act or default of his own, be liable to a penalty not exceeding forty shillings, and a daily penalty of a like amount: Provided always, that the owner or owners so providing a supply of gas or other light shall be entitled to recover the amount expended by such owner or owners in providing such supply from the occupiers of every such house or building in, or entering or having access by the common stair, passage, or court each such occupier being liable to pay his proportionate part of such amount according to the rent payable by each such occupier respectively: Provided further, that the occupier or occupiers shall in all cases clean, light, and extinguish the lights, at such time or times as shall be ordered by the commissioners by any resolution passed by them and published once weekly for at least two weeks in some newspaper published or circulating in the burgh; and any occupier failing to comply with any such order or resolution shall be liable to a penalty not exceeding forty shillings, and to a daily penalty of like amount.

Power to commissioners to supply light and charge owner.

105. The commissioners may at any time, and from time to time as they think fit, provide, fit up, and maintain and renew, in such [common stairs] *common courts*, passages, or private courts, *as they may consider to be insufficiently lighted*, all necessary lamps, brackets, and other means of lighting, and all necessary means of extinguishing the light, and provide the necessary supply of gas or other light therefor, and by their inspector of lighting, or any other officer or servant of the commissioners, clean any lamps and brackets, and light and extinguish the same, and for all purposes aforesaid the inspector of lighting, or any other officer or servant of the commissioners, shall be entitled to require and shall have access to and from all such common stairs, passages, or private courts at all times, and the commissioners may, in such cases as they think fit, recover the expense they may incur as a debt from the owner, or if there are more owners than one, then proportionately from each owner according to the rental of the properties of each owner in any house or building or part thereof, to which access is obtained by such common stair, passage, or private

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court, and such owner or owners shall be entitled to recover the amount expended in providing the supply of gas or other light from the occupiers, each such occupier being liable to pay his proportionate part of such amount according to the rent payable by him: Provided always, that the said expense, recoverable by the commissioners as aforesaid, shall not in the case of common stair lighting exceed twenty shillings per burner per annum, and in the case of all other lighting exceed twenty-five shillings per burner per annum.

The words in italics were repealed and the words in brackets were inserted by the Burgh Police (Scotland) Act, 1903, Sched.

Where the local authority themselves undertake the lighting of common stairs they are responsible for damage caused by insufficient lighting to persons lawfully using the common stair (*Driscoll* v. *Commissioners of Burgh of Partick*, Ct. of Sess. Cas., 2 Fraser, 368).

Commissioners may remove, etc. lamp post, etc. where not lighted according to regulations.

106. If the commissioners shall have given permission to any person to erect any lamp posts, lamp globes, gas fittings, or other articles, and if the same shall not be kept lighted, or otherwise disposed, according to the orders or regulations of the commissioners, the commissioners may take possession of or remove the same without compensation being made therefor: Provided always, that any such lamp posts, lamp globes, gas fittings, or other articles so removed shall be delivered up to the ower thereof, in the event of his claiming the same, within six months after such removal, and paying all costs and expenses attending the removal and preservation of the same.

Situation of gas and water pipes to be altered if required by commissioners.

149. If the commissioners deem it necessary to raise, sink, or otherwise alter the situation of any water pipe or gas pipe, or other waterworks or gasworks, laid in any [new street] *such streets*, they may from time to time, by notice in writing, require the person to whom any such pipes or works belong to cause forthwith any such pipes or works to be raised, sunk, or otherwise altered in position in such manner as the commissioners may direct; provided that such alteration be not such as permanently to injure such works, or to prevent the water or gas from flowing freely and conveniently; and the expenses attending such alteration shall be paid by the commissioners out of the burgh general assessment, or other rates or assessments, as the case may be.

The words "new street" were substituted for "such streets" by the Burgh Police (Scotland) Act, 1903, Sched.

Lighting, etc. of public buildings.

175. Every public building, theatre, or place of public entertainment shall be supplied with means of lighting, and of sufficient ingress and egress for the protection of the public in cases of emergency, to be approved of by the commissioners from time to time as they shall deem necessary.

Byelaws.

316. The Commissioners may from time to time make byelaws as they think fit for the purposes after mentioned, videlicet :—

. . . .

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(4.) For fixing the times of lighting and extinguishing the lights in common stairs, passages, or private courts, and the order or rotation in which the occupiers of houses or flats in common stairs, passages, or private courts shall be responsible for the lighting and extinguishing of such lights :

. . . .

The Commissioners may from time to time repeal, alter, or amend any such byelaws, provided the byelaws after such repeal, alterations, or amendment, be not repugnant to the law of Scotland or the provisions of this Act, and be reduced into writing, and have affixed thereto the signatures of three of the Commissioners, and also of the clerk, and if they affect other persons than the officers or servants of the Commissioners, be confirmed and published as herein provided.

BURGHS GAS SUPPLY (SCOTLAND) ACT, 1893.

(56 & 67 VICT. C. 52.)

An Act to amend the Burghs Gas Supply (Scotland) Act, 1876.

[22nd September, 1893.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, as follows :

Short title and construction.

1. This Act may be cited as the Burghs Gas Supply (Scotland) Act, 1893, and it shall be read and construed along with the Burghs Gas Supply (Scotland) Act, 1876.

Amendment, 39 & 40 Vict. c. 49, s. 18.

2. The provisions of the eighteenth section of the recited Act, which enact that the commissioners for executing that Act shall not manufacture or store gas or any residual products upon any lands without the previous consent in writing of the owner, lessee, and occupier, of every dwelling-house situate within three hundred yards of the limits of such lands, shall be modified and altered to the following effect, viz. : It shall no longer be necessary to make the return to the Board of Trade required by the recited Act, but before proceeding with such manufacture or storage the commissioners shall give notice in writing to every owner, lessee, and occupier of every dwelling-house situate within three hundred yards of the limits of the land in question and by advertisement published once a week for two weeks in any newspaper circulating within the burgh, of their intention to proceed with such manufacture and storage, and in the event of any owner, lessee, or occupier refusing or delaying to give the consent provided for in the recited Act for more than ten days after the last date of publication of such advertisement, the sheriff may, on the application of the commissioners and after such investigation and inquiry as he may deem

Sect. 2. necessary, by a deliverance under his hand find and declare that such consent may be dispensed with, and such deliverance shall be final and not subject to review, and the sheriff shall make such finding as to the expenses of the application as shall seem to him just in the circumstances.

It shall not be in the power of the commissioners to renew such application until the expiration of a period of twelve months from the date of the deliverance.

In this section the word "sheriff" shall not include sheriff substitute.

LOCAL GOVERNMENT (SCOTLAND) ACT, 1894.

(57 & 58 VICT. C. 58.)

Formation of lighting and scavenging districts, and provision of public baths.

44.—(1.) It shall be lawful in a county for a parish council or for any two or more parish councils, or for not fewer than ten parish electors of any landward parish or of the landward part of any parish partly landward and partly burghal, to make a requisition in writing to the district committee of the county council, or when a county is not divided into districts to the county council, calling upon them to form such parish or parishes or landward part of a parish or any portion or portions thereof into a special district for the following purposes or any one or more of them; that is to say,—

(a.) The lighting of the special district and the adoption for such purpose by the district committee or county council as the case may be of the provisions contained in sections ninety-nine to one hundred and five inclusive of the Burgh Police (Scotland) Act, 1892, or any one or more of them:

55 & 56 Vict. c. 55.

(b.) The scavenging of, and the removal of dust, ashes, and other refuse from, the streets, roads, footpaths, lands and premises in such special district, and the adoption for such purposes by the district committee or the county council, as the case may be, of the provisions contained in sections one hundred and seven to one hundred and twenty-seven, and two hundred and fifty-three to two hundred and fifty-five, inclusive, of the Burgh Police (Scotland) Act, 1892, or any one or more of them:

(c.) The provision and maintenance of public baths or bathing places, wash-houses, and drying grounds, and the adoption for such purposes by the district committee or county council, as the case may be, of the provisions contained in sections three hundred and nine to three hundred and fourteen, inclusive, of the Burgh Police (Scotland) Act, 1892, or any one or more of them.

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(2.) Upon such requisition being received, the district committee or county council, as the case may be, shall be bound to meet, after twenty-one clear days notice, and shall consider the propriety of forming such parish or landward part of a parish or portion thereof into a special district, and shall by resolution either approve or disapprove of the formation of a special district (which shall in no case include a police burgh or any portion thereof) for the purposes stated in the requisition or any one or more of them, and, if they approve thereof, shall define the boundaries of such special district and specify which of the provisions of the Burgh Police (Scotland) Act, 1892, referred to in the preceding sub-section are to be adopted therein. Such resolution shall be final, subject to the provisions of sub-section three of this section, and in the event of the district committee or county council, as the case may be, disapproving of the formation of a special district as proposed in a requisition, it shall not be competent to make another requisition, to the same effect until after the expiration of twelve months. A copy of such resolution shall be forthwith published in one or more newspapers circulating in the district and transmitted to the Board and to the county council. 55 & 56 Vict. c. 55.

See *Hill* v. *Grant* (1899), 1 F. (Just.), 42.

(3.) Where the proposed special district is co-extensive with or comprises the whole or part of the area of any special drainage or water supply district formed under the Public Health Acts, the consent of the county council shall be required to any resolution approving of the formation of a special district under this section, and in giving or refusing such consent the county council shall take into consideration the whole circumstances of the case, including the amount of the rates levied for the time being under the Public Health Acts and the principal Act within the proposed special district, and the county council may consent to the resolution either with or without modifications.

(4.) On the adoption by a district committee or county council, as the case may be, of any of the provisions above mentioned, such provisions shall have effect within or in relation to the special district, subject to the provisions of the Fourth Schedule to this Act annexed.

(5.) The area of a special district formed under this section may be enlarged or altered, and two or more special districts may be combined, from time to time, by resolution of the district committee or county council, as the case may be, in terms of this section, with or without a requisition.

(6.) Any expenditure attending the formation of a special district, or the carrying out within such special district of the purposes of this section or any of them, shall be paid out of an assessment to be imposed by the county council within the special district, to be called the special district rate, and levied along with and as an addition to

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8 & 9 Vict. c. 83.

(7.) The total amount required to be raised (so far as within a county) by a public health rate (including any special district rate) may be certified by the county council to the parish council, and may be collected by the parish collector along with the poor rate of the parish. The amount collected in such case shall be paid over to the county council without any deductions, but the expense of collection (including the reasonable remuneration of the collector) shall be a debt from the county council to the parish council.

(8.) Where a special district has been formed under this section, the district committee or the county council, as the case may be, may, subject to regulations to be from time to time made with the consent of the county council, appoint annually a sub-committee for carrying out the purposes for which such special district has been formed, and such sub-committees shall in whole or in part consist of parish councillors of the parish or parishes in which the special district is situated, whether members of the district committee or not.

(9.) From and after the first election in a county of parish councillors, sub-section one of section eighty-one of the principal Act shall be read as if for the words "shall in part consist of persons, whether members of the district committee or not, who are resident within the special drainage district or special water supply district," there were substituted the words "shall in whole or in part consist of parish councillors of the parish or parishes in which the special district is situated, whether members of the district committee or not," and the number of a sub-committee appointed under the said section may, failing agreement between a district committee or county council and a town council or the commissioners of a police burgh, be determined by the Secretary for Scotland.

(10.) Upon the formation of a special lighting district under the provisions of this section it shall be lawful for the district committee to adopt the Burghs Gas Supply (Scotland) Act, 1876, and any Act amending the same, but in such case the provisions of the principal Act with respect to capital, expenditure, borrowing, and audit of accounts shall apply in lieu of the corresponding provisions of the former Acts or of this section; and in the application of the former Acts the expression "burgh" shall be construed to mean special

39 & 40 Vict. c. 48.

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* The words in italics repealed by the Public Health (Scotland) Act, 1897 (60 & 61 Vict. c. 38), s. 196.

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lighting district, "commissioners," "town council" and "commissioners of police" to mean district committee, and "elector" and "ratepayer" to mean a person registered as a county elector the subject of whose qualification is situated within the special lighting district.

II.—WATER SUPPLY.

THE first Act giving powers to local authorities in regard to water supply was the General Police and Improvement (Scotland) Act, 1850, (13 & 14 Vict. c. 33), which, by ss. 294 *et seq.*, gave to the local authorities under that Act the same powers as had been given to local authorities in England by the Public Health Act, 1848,—s. 298 of the Scotch Act being, *mutatis mutandis*, in the same terms as s. 75 of the English Act. In 1862, the General Police and Improvement (Scotland) Act, 1862 (25 & 26 Vict. c. 101), was passed, and by s. 1, the Act of 1850 was repealed, except only as regards any burgh in which the provisions of the same had been adopted on or before August 1st, 1862. The Act of 1862 then proceeds (ss. 216—227) to enact similar provisions to those contained in the Act of 1850. The Act of 1862 has in its turn been repealed by the Burgh Police (Scotland) Act, 1892 (55 & 56 Vict. c. 55), s. 6 and Sched. 1, except to such extent as it is incorporated by reference in portions of local police Acts not repealed by that Act.

By the Local Government (Scotland) Act, 1889 (*post*, p. 987), provision is made for dividing every county into districts for the purposes of the administration of the laws relating to public health, and for the constitution of a district committee for each district, which committee shall be the local authority therein under the Public Health (Scotland) Acts (ss. 17, 77, 78). Special provision is further made with respect to special drainage districts and special water supply districts (s. 81). By the Public Health (Scotland) Amendment Act, 1891, power is given to these district committees (subject to certain limitations and conditions) to undertake water supply with power to levy asessments. The Waterworks Clauses Acts, 1847 and 1863, are incorporated with necessary exceptions. It is, however, provided that nothing in the Act is to authorise the supply of water in "any district which is already authorised to be supplied with water by any water company or water commissioners, or trustees established by Act of Parliament" (s. 7).

The Public Health (Scotland) Amendment Act, 1891 (*post*, p. 991), an adoptive Act, authorised the division of the assessment for water supply into (1) domestic water rate; and (2) public water rate.

The Burgh Police (Scotland) Act, 1892 (*post*, p. 995), authorised "the Commissioners"—for which read now "the Town Councils," under the Town Councils (Scotland) Act, 1900—to provide the burgh with a supply of water, with power to purchase, take on lease, or construct waterworks, open streets, etc., with a proviso that before constructing or laying down any waterworks within any limits within which any waterworks company or water commissioners shall have been established for supplying water, the Commissioners shall give notice in writing to the water company or water commissioners, stating the extent to which water is required, and they may not construct any waterworks so long as the water company or water commissioners shall be willing to lay on water proper and sufficient for all reasonable purposes for which it is required by the Commissioners (s. 261). The Act of 1892 further provided that in every burgh having less than 5,000 inhabitants at the date of the last census, they may, under conditions provided, obtain the permission of the sheriff to put in force the provisions of the Lands Clauses Acts with reference to the acquisition of lands otherwise than by agreement (s. 262). The word "lands" is defined to include "springs, rights of servitude," etc. (s. 4 (16)). And now by the Public Health (Scotland) Act, 1897, it is provided that "in the Burgh Police (Scotland) Act, 1892, and in the Lands Clauses Acts, so far as incorporated therewith, or authorised thereby to be put in force, the term 'land' shall include water and any right or servitude to or over land or water" (s. 124). The Act of 1892 gives a power to compel owners to put in service pipes (s. 263), and incorporates the Waterworks Clauses Acts, 1847 and 1863, with respect to the necessary matters.

Under s. 45 of the Burgh Police (Scotland) Act, 1892, a town council desiring to supply water may apply for a Provisional Order, or, alternatively, they might apply for a Provisional Order under the Private Legislation Procedure Act.

The Public Health (Scotland) Act, 1897 (*post*, p. 1002), repeals and takes the place of the Public Health (Scotland) Act, 1867, and certain Acts amending the same. Its main enactments as regards water supply may be summarised as follows:

(1.) As regards burghs subject to the Act of 1892, or having a local Act, nothing in the Act of 1897 shall prejudice the provisions of any of the said Acts in regard to the provision of a supply of water for the domestic use of the inhabitants, and for sanitary and other purposes; provided that where in the Act of 1892, power is given to take "land" compulsorily, that expression "shall include water and any right or servitude to or over land or water" (s. 124).

(2.) A power to require water to be supplied to houses in certain cases (s. 125).

(3.) As regards districts other than burghs, the local authority may acquire and provide or arrange for a supply of water . . . and may purchase, take on lease, construct, etc., waterworks, and furnish a supply of water "and for the purposes aforesaid, the local authority shall be held to have all the powers and rights given to, and be subject to all the obligations imposed on the promoters of undertakings by the Lands Clauses Acts, as amended by this Act." All this is subject to a proviso that it shall not be lawful for the local authority to provide or supply water within any area which any local authority or any company "established by Act of Parliament, or empowered by or authorised by Provisional Order, is authorised to supply water, unless the local authority shall previously have purchased or acquired the undertaking of such local authority or company" (s. 126).

(4.) There is contained in the Act a power for local authorities to combine (s. 130), and there is a section authorising the formation of special water supply districts in counties (s. 131); and the Waterworks Clauses Acts, 1847 and 1863, are incorporated with certain limitations (s. 132).

By s. 5 of the Burgh Sewerage, etc. Act of 1901, it is provided that Town Councils shall have the same powers as are conferred by the Public Health Act, 1897, on rural authorities, with the exception of the power to form special districts, and the Public Health Act was for that purpose incorporated with the Burgh Police Act, 1892.

The Gas and Water Works Facilities Acts, 1870 and 1873, are applicable to Scotland. As to these Acts, see *ante*, p. 787 *et seq.*

LOCAL GOVERNMENT (SCOTLAND) ACT, 1889.

(52 & 53 VICT. c. 50.)

Transfer of powers of parochial boards under Public Health Acts.

17. With respect to the transference to the county council of the powers and duties of certain local authorities under the Public Health Acts, the following provisions shall have effect:

(1.) For the purposes of the administration of the laws relating to public health, the county shall, except as hereinafter provided, be divided into districts in the manner provided in this Act, and there shall be a district committee for each such district constituted as provided in this Act.

(2.) A district committee shall, subject to the provisions of this Act, be the local authority under the Public Health Acts, and as such shall have and may exercise within its district all the powers and duties and be subject to all the liabilities by this Act transferred to or conferred on the county council with respect to the administration of the laws relating to public health, except those relating to medical officers or sanitary inspectors for the county, and subject to the provisions following:

(a) A district committee shall have no power of raising money by rate or loan:

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(b) The county council shall make general regulations for the government of a district committee, and such committee shall conform to those regulations:

(c) Any five ratepayers in the district may appeal from any proceedings or order of a district committee to the county council, who shall have power to confirm or vary or rescind such proceedings or order; and such proceedings or order shall be stayed pending the appeal, but the power of appeal hereby given shall not apply to any proceedings for the removal of a nuisance; and nothing in this Act contained shall affect or prejudice any proceedings to enforce the provisions of the Public Health Acts, save only that when necessary such proceedings shall be taken by or against the district committee instead of against the parochial board as local authority under the said Acts. The medical officer or the sanitary inspector of the county or district may appeal to the county council, and the county council may on such appeal make an order under the Public Health Acts.

(3.) The power of appointing officers under the Public Health Acts is hereby varied, so that it shall be lawful to appoint such officers either for the whole district or for any part thereof or parish therein as shall be deemed expedient. The officers so appointed shall have, as nearly as may be, within the areas respectively assigned to them the same powers, duties, rights, and tenure (if any) as the officers, as the case may be, of the existing local authority have within the area of the parish.

(4.) The sums necessary to meet any deficiency in respect of the expenditure under the Public Health Acts within any district shall be levied by the county council by a rate imposed on all lands and heritages within such district, or within any special drainage or water supply district within the meaning and subject to the provisions of the Public Health Acts.

See ss. 12 (3) and 131 of the Public Health (Scotland) Act, 1897.

Division of county into districts for roads and public health purposes.

77. In order to give effect to the provision of this Act that (except as herein-after provided) every county shall be divided into districts for the purposes of the management and maintenance of highways, and the administration of the laws relating to public health, there shall be enacted the following provisions:

(1.) The county council shall at their first meeting in the month of May next after the passing of this Act, and thereafter from time to time, divide the county into districts for the purposes in this section mentioned in such manner that each district shall comprise a group of electoral divisions, and that each parish, so far as within the county, shall be wholly included in one district. Provided always that such division

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into districts shall not be made if it shall appear to the county council unnecessary or inexpedient in the case of a county containing fewer than six parishes, or which has not been divided into districts for the purposes of the management and maintenance of highways therein.

(2.) Each district shall have the same contents and boundaries for all the purposes in this section mentioned.

Constitution of district committee.

78. Whenever for the purposes of this Act a county is, as herein-before provided, divided into districts, the following provisions shall have effect with respect to the constitution of the district committee for each district:

(1.) The district committee shall consist of the county councillors for the electoral divisions comprised in the district, together with one representative from the parochial board of each parish comprised or partly comprised therein, and one representative of each burgh within the meaning of the Roads and Bridges (Scotland) Act, 1878, where the management and maintenance of the highways within the burgh have, under the provisions of the last-mentioned Act, been transferred to the county. Provided that in the case of parishes partly landward and partly burghal the representative from every such parish shall be a ratepayer within the meaning of this Act.

(2.) The representatives of the parochial boards and burghs as aforesaid shall be appointed from time to time by their respective boards and town councils, and their appointment shall be forthwith intimated in writing to the county clerk, and after his appointment as herein-after provided, to the clerk of the district committee. Each such representative shall hold office until the appointment of his successor has been duly intimated.

(3.) Provided that where a county is not divided into districts the powers and duties and liabilities of a district committee under this Act shall devolve upon the county council, and for the purposes of the management and maintenance of highways, and the administration of the laws relating to public health, the following persons shall be deemed to be county councillors; that is to say, one representative from a parochial board of each parish comprised or partly comprised within the county, and one representative of each burgh within the meaning of the Roads and Bridges (Scotland) Act, 1878, where the management and maintenance of the highways within the burgh have, under the provisions of the last-mentioned Act, been transferred to the county; and the provisions of the immediately preceding sub-section shall apply to those representatives.

Powers and designation of district committee.

79. Each district committee shall have and may exercise all the powers and duties and be subject to all the liabilities transferred to or conferred upon it, as the case may be, by or in pursuance of but subject to the provisions of this Act, and shall be designated according to the district within which it acts, and may sue and be sued under that designation.

Proceedings of district committee.

80. The first meeting of a district committee shall take place as soon as may be after the thirty-first day of May next after the passing of this Act, and shall be called by the county clerk by circular addressed to each member whose appointment has been intimated to him. The committee may act notwithstanding any vacancy upon it. For the purpose of the regulation of its quorum and proceedings a district committee shall be deemed to be a committee of the county council.

Provided that a district committee may from time to time elect a chairman who shall hold office for such period as shall be fixed at his election, and in the case of an equality of votes for two or more persons as chairman, one of those persons shall be elected by lot. The chairman shall have a casting vote as well as a deliberative vote. A district committee shall have power to appoint and remove a district clerk and district treasurer if need be, and, subject to the approval of the county council, to fix the salary which shall be payable to them.

Provision for special drainage or water supply districts.

81. With respect to special drainage districts or special water supply districts, the following provisions shall have effect :

(1.) Where a special drainage district or special water supply district has been formed in any parish under the Public Health Acts, the district committee may, subject to regulations to be from time to time made with the consent of the county council, appoint a sub-committee for the management and maintenance of the drainage or water supply works, and such sub-committee shall in part consist of persons, whether members of the district committee or not, who are resident within the special drainage district or special water supply district ;

(2.) Where a special drainage district or special water supply district is partly within a county and partly within a burgh or police burgh, the sub-committee appointed under the immediately preceding sub-section and such number of the town council or police commissioners (as the case may be) of such burgh or police burgh as failing agreement the Secretary for Scotland may determine, having regard to all the circumstances of the case, shall be charged with the management and maintenance of the drainage or water supply works within such special district, and the determination of the Secretary for Scotland may provide for the regulation of the proceedings and for the allocation and payment of the expenses incurred under this sub-section ;

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(3.) Where a special drainage district or special water supply district is wholly within a police burgh formed after the passing of this Act, the police commissioners of such police burgh shall become the local authority under the Public Health Acts for such special district, [*and the assessments in respect of the drainage and water supply shall be levied in the same manner as they were before such district was formed into a police burgh*].

The power and machinery for the formation of a special water supply district is now to be found in the Public Health (Scotland) Act, 1897, s. 122 (5). That Act provides that "Nothing contained in this Act shall prejudice the provisions of sub-sections one and two of section eighty-one of the Local Government (Scotland) Act, 1889, as amended by section forty-four of the Local Government (Scotland) Act, 1894." See *ante*, p. 982.

See also s. 3 of the Burgh Sewerage, etc., Act, 1901, *post*, p. 1021.

The cases decided under s. 81 in the text will be found with others on the same subject in the notes to s. 131 of the Act of 1897, *post*, p. 1007.

The words in italics were repealed by the Public Health (Scotland) Act, 1897, s. 196. See ss. 133—138, of that Act.

Payments to and by district committee.

82. All sums passed by the county council to the account of any district committee shall be paid into an account to be kept in name of the district committee with an incorporated or joint stock bank (including any branch thereof) for that purpose appointed by the county council; and all cheques on such account shall be signed by two members of the district committee nominated for that purpose by the committee, and be countersigned by the district clerk.

PUBLIC HEALTH (SCOTLAND) AMENDMENT ACT, 1891.

(54 & 55 Vict. c. 52.)

An Act to amend the Public Health (Scotland) Acts.
[5th August, 1891.]

WHEREAS by the Local Government (Scotland) Act, 1889, provision is made by sections seventeen and seventy-seven for dividing every county into districts for the purposes of the administration of the laws relating to public health, and by sections seventeen and seventy-eight for the constitution of a district committee for each district, which shall be the local authority therein under the Public Health (Scotland) Act, 1867, and any amending Act, in this Act referred to as the Public Health (Scotland) Acts:

53 & 54 Vict. c. 50.

30 & 31 Vict. c. 17.

And whereas such districts comprise several parishes, and it has been found to be expedient, in order to facilitate the administration of the last-mentioned Acts with respect to the supply of water to such districts or parts thereof, that the said Acts should be amended as hereinafter provided :

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title and construction.

1. This Act may be cited for all purposes as the Public Health (Scotland) Amendment Act, 1891, and the Public Health (Scotland) Acts and this Act shall be read and construed together as one Act.

The Public Health (Scotland) Act, 1867, and other Acts amending the same anterior to 1891, were repealed by the Public Health (Scotland) Act, 1897, which takes their place.

Commencement of Act.

2. This Act shall not take effect within any district in any county until after the county council shall, on the application of the district committee, have passed a resolution approving of its taking effect within such district, such resolution having been passed, and such application having been sanctioned at meetings called with special notice of the resolution to be submitted thereat.

An application of a district committee or a resolution of a county council shall not have effect for the purposes of this section unless approved of by an absolute majority of the whole members of the district committee or county council, as the case may be.

Incorporation of Act and parts of Act. 30 & 31 Vict. c. 17.

3. The following Acts, and parts of Acts, so far as the same respectively are applicable for the purposes and are not inconsistent with the provisions of the Public Health (Scotland) Act, 1867, are hereby incorporated with that Act :

10 & 11 Vict. c. 17.

The Waterworks Clauses Act, 1847, except the provisions with respect to the amount of profit to be received by the undertakers when the waterworks are carried on for their benefit, and except the words in section forty-four thereof, " with the consent in writing of the owner or reputed owner of any such house, or of the agent of such owner " ;

26 & 27 Vict. c. 93.

The Waterworks Clauses Act, 1863 ;

8 & 9 Vict. c. 33.

The provisions of the Railways Clauses Consolidation (Scotland) Act, 1845, with respect to the temporary occupation of lands near the railway during the construction thereof, but such last-mentioned provisions shall apply only in the case of any reservoir, filter, or distributing tank which the local authority may be authorised to construct, and the works immediately connected therewith ; and for the purposes of this Act those provisions shall be read as if such reservoir, filter, or tank, and works were therein mentioned, instead of " the railway," and the boundaries of such reservoir, filter, or tank, and works, instead of " the centre of the railway ; " and the prescribed limits shall be two hundred yards from such boundaries.

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Division of assessment for water supply into (1) domestic water rate, and (2) public water rate.

4. Upon this Act taking effect the expense incurred or to be incurred by the district committee as local authority under the provisions of the Public Health (Scotland) Acts during the year ensuing for water supply (including the sums necessary for payment of interest on and repayment of instalments of any money borrowed for providing such supply) shall be paid out of the assessments in this section authorised; that is to say:

(1.) It shall be lawful for the county council, and they are hereby authorised and required, once in every year to impose and levy an assessment (to be called the domestic water rate) upon all lands and heritages within the district which shall have been supplied with water by the district committee as local authority at such rate in the pound as shall be sufficient, when supplemented by the public water rate, if any, to defray the expense hereinbefore mentioned;

(2.) It shall be lawful for the county council, and they are hereby authorised, once in every year to impose and levy an assessment (to be called the public water rate) if they shall think fit upon all lands and heritages within the district, but such rate if imposed shall not exceed threepence in the pound, and may be such less amount as the county council may from time to time determine.

(3.) The assessments or rates in this section mentioned shall not in the aggregate exceed the rates authorised by the Public Health (Scotland) Acts, and shall be imposed and levied and be payable, and may be recovered in the same manner, as nearly as may be, as assessments under the provisions of the Public Health (Scotland) Acts.

Provided always that—

(a) Where a special water supply district has been formed in the manner provided in the said Acts, and a sufficient supply of water has been obtained and is maintained therein under the authority of the said Acts, the lands and heritages situated within such special water supply district shall not be liable to assessment for the expense of supplying water to other parts of the districts;

(b) The local authority shall not be obliged to furnish a supply of water to any person for any less sum than five shillings in any one year.

(c) No person shall be entitled to demand such supply of water or to require the local authority to lay down communication pipes, unless some pipe of the local authority shall have been laid within one hundred feet of the house or other premises in respect of which such supply or communication pipes are demanded, or unless the local authority shall become bound by virtue of a requisition and agreement made and executed

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in the manner and to the extent required by the Waterworks Clauses Act, 1847, to cause pipes to be laid down within the said distance of one hundred feet of such house or other premises.

See note to s. 1.

Power to borrow on security of assessments.

5. The county council as the local authority may, in addition to the powers conferred by section eighty-nine (six) of the Public Health (Scotland) Act, 1867, borrow money for the purposes therein set forth on the security of the assessments hereby authorised, and may assign the said assessments and the general assessments that may be imposed under the said Act or any of them in security of the money to be so borrowed.

See note to s. 1 of this Act, *ante*, p. 992, and s. 140 of the Public Health (Scotland) Act, 1897 (60 & 61 Vict. c. 38), *post*, p. 1012.

Power to abolish certain special water supply districts

6. If in any special water supply district the maximum rates leviable shall be inadequate to provide and maintain a sufficient supply of water, it shall be lawful for the local authority, at a meeting called with special notice, to resolve by an absolute majority of their number, to apply to the county council, who may by an absolute majority of the whole members of the council resolve, subject to such conditions as they may determine regarding the payment of any debt that may affect such special water supply district, that the area embraced within the boundaries of such special water supply district shall cease to exist as a special water supply district, and, in the event of such local authority so resolving, such area shall, subject as aforesaid, from and after a date to be fixed by such local authority cease to be rated and assessed for the purposes of water supply separately from the district; but such area may continue to be rated and assessed separately from the district for the purpose of the payment of such debt.

A resolution of a local authority under this section shall not have effect until it is confirmed by the Secretary for Scotland on the application of the county council, and after such inquiry as the Secretary for Scotland shall deem necessary. The costs of any such inquiry shall be borne by the local authority.

See *post*, pp. 1007 *et seq.*, as to special water supply districts.

Saving for existing water companies and commissioners.

7. Nothing contained in or done in pursuance of the provisions of this Act shall authorise the supply of water to, or any assessment to be imposed and levied within, any district or part of a district which is already authorised to be supplied with water by any water company or water commissioners or trustees established by Act of Parliament, or shall prejudice or affect the last proviso of subsection one of section eighty-nine of the Public Health (Scotland) Act, 1867.

The proviso referred to is as follows: "Provided also that it shall not be lawful for the local authority to provide or supply water in any burgh, parish, or district which any company established by Act of Parliament is authorised to supply with water, unless the local authority shall previously have purchased or acquired the undertaking of such company." See, now, the proviso to s. 126 (1) of the Public Health (Scotland) Act, 1897, *post*, p. 1004.

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8. Nothing contained in or done in pursuance of the provisions of this Act shall in any way prejudice the rights or powers of creditors who before the passing of this Act have advanced moneys to any local authority under the Public Health (Scotland) Acts, and all securities for such moneys may be enforced against the same assessments against which they may be enforced at the passing of this Act.

Saving for existing loans.

BURGH POLICE (SCOTLAND) ACT, 1892.*

(55 & 56 VICT. C. 55.)

SUPPLY OF WATER.

257. The commissioners, except when provision is otherwise made under the authority of an Act of Parliament, shall cause all existing public cisterns, pumps, wells, conduits, fountains, and other waterworks used for the gratuitous supply of water to the inhabitants within the burgh, unless the water therein is found to be dangerous or injurious to health, or unfit for dietetic purposes, to be continued, maintained, and supplied with water, or they shall substitute other such works equally convenient, and shall cause them to be maintained and supplied with water; and such public cisterns and other works shall be vested in the commissioners, and be under their management and control; and the commissioners may construct and maintain any number of new cisterns, pumps, conduits, fountains, and other waterworks for the gratuitous use of any persons who choose to carry the water away, not for sale, but for their own private use, and may supply with water any public baths or washhouses.

Power to commissioners to construct public cisterns and pumps for supply of water to baths and washhouses.

See the cases collected under the similar section (s. 64) of the Public Health Act, 1875, *ante*, p. 871.

258. The commissioners may contract, for any period not exceeding three years at one time, with the owners of any waterworks, or any other person, for such supply of water as the commissioners shall think necessary for the purposes of this Act.

Commissioners may contract for supply of water.

259. If the commissioners, and the owners of any waterworks for supplying water within the burgh, with whom the commissioners may be desirous of contracting for the supply of water to the inhabitants, do not agree as to the terms and conditions of the supply and the price to be paid for such supply, then such terms and conditions and price (except where by the Act authorising such waterworks some other mode of

For ascertaining price to be paid for water in case of dispute.

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* See *ante*, p. 975, for sections of this Act which relate to water and also to lighting. By the Burgh Police (Scotland) Act, 1903, that Act and the Burgh Police (Scotland) Acts of 1892 and 1893 and the Burgh Sewerage, Drainage and Water Supply (Scotland) Act, 1901, are to be read as one Act.

Sect. 259. determining such terms and conditions and price shall be provided) shall be settled by arbitration, and for that purpose the clauses of the Lands Clauses Acts with respect to the settlement of disputes by arbitration shall be incorporated with this Act.

Firecocks may be placed on pipes of water companies.

260. It shall be lawful for the commissioners, at the sight of the engineer of any water company established or to be established for supplying water within the burgh, or any company or corporation actually supplying water within the burgh, to place proper firecocks upon the pipes belonging to any such company within the burgh, at such convenient distances from each other and at such places as may be considered proper for the supply of the fire engines when brought into operation, the positions of such firecocks being first arranged by the commissioners with the directors of such water company; and in case of difference of opinion between them, the same shall be determined by the sheriff, whose judgment thereon shall be final, and not subject to review.

See notes, *ante*, pp. 479 *et seq.*

Commissioners may provide sufficient supplies of water, and may erect waterworks, etc.

261. The commissioners may provide the burgh with such a supply of water as may be proper and sufficient for the purposes of this Act, and may maintain such a constant flow of water, by means of a reservoir or reservoirs, or otherwise, as may be requisite for the health of the inhabitants or the amenity of the burgh, and for private use to the extent required by this Act; and for *other* [these]* purposes, or any of them, the commissioners may from time to time contract with any person whomsoever, or purchase, take upon lease, hire, construct, lay down, and maintain such reservoirs and waterworks, and do and execute all such works, matters, and things as shall be necessary and proper, including the opening of streets, public or private, from time to time for the purpose of laying down, altering, or repairing water pipes therein; and any waterworks company or owners or lessees of reservoirs may contract with the commissioners to supply water for the purposes of this Act in any manner whatsoever, or may sell and dispose of or lease their reservoirs and waterworks to the commissioners; and the commissioners may provide and keep in any waterworks constructed or laid down by them under the powers of this Act a supply of pure and wholesome water, and the water so supplied may be constantly laid on at such pressure as will carry the same to the top story of the highest dwelling-house within the burgh; and the commissioners, by means of such reservoirs and waterworks, or either of them, may maintain such a constant flow of water as may be requisite for the health of the inhabitants or the amenity of the borough: Provided always, that before constructing or laying down any waterworks under the powers of this Act, within any limits within, for, or in respect of which any waterworks company or water commissioners shall have been established for supplying water, the commissioners shall give notice in writing to every waterworks company or water commissioners within whose limits the commissioners may be desirous of laying on or supplying water, stating the purposes for and (as far as may be practicable) the extent to which water is required by the commissioners ; and it shall not be lawful for the commissioners to construct or lay down any waterworks within such limits, if and so long as any such company or water commissioners shall be able and willing to lay on water proper and sufficient for all reasonable purposes for which it is required by the commissioners ; and in case any difference shall arise as to whether the water which any such company is able and willing to supply or lay on is proper and sufficient for the purposes for which it is required by the commissioners, or whether the purposes for which it is required are reasonable, the same shall be settled by the sheriff, upon summary application by either of the parties, and the decision of the sheriff shall be final.

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* By s. 6 (2) of the Burgh Sewerage, etc. Act, 1901, the word "these" was substituted for the word "other."

Burghs having less than 5,000 inhabitants may obtain from the sheriff compulsory powers for water supply.

262. In every burgh having less than five thousand inhabitants at the date of the last census, if the commissioners resolve that, in order to obtain a supply of water for the burgh, it is necessary for them to acquire land otherwise than by agreement, they may, instead of proceeding under the Public Health Acts, present a petition to the sheriff in manner hereinbefore provided, and obtain his authority to put in force the provisions of the Lands Clauses Acts with reference to the acquisition of lands otherwise than by agreement.

Other burghs requiring to acquire land compulsorily may proceed under s. 45, *ante*, p. 976, or under the Public Health Act, 1897, incorporated by the Act of 1901. They might also proceed under the Private Legislation Procedure Act. Sect. 124 of the Public Health Act, 1897, enacts that "land" in the present Act and in the Lands Clauses Act, as incorporated therewith or thereby authorised to be put in force, shall include "water and any right or servitude to or over land or water."

Service pipes to be laid by owners.

263. Where the commissioners resolve to supply the houses or tenements within the burgh with water for domestic and ordinary purposes, the owners of such houses and tenements shall be entitled to obtain such supply by connecting a service pipe with the main pipes to be laid down by the commissioners, the expense of such service pipes and of connecting the same with the main pipes being defrayed by such owners ; and where the houses and tenements generally in any street within the burgh shall be supplied with water by means of such service pipes, it shall be competent to the commissioners to require the owner of any tenement in such streets not so supplied to take a supply of water by connecting a service pipe with the main pipe as aforesaid; and in the event of refusal or delay on the part of such owner to comply with such requisition, it shall be lawful for the commissioners to enter such house or premises and proceed to lay down such service pipe themselves, and to recover the expense thereof from such owner ; and wherever it is practicable all supplies of water for domestic use shall be taken direct from the main or service pipes and not from cisterns.

Water to be used only for domestic and ordinary

264. No person shall be entitled, without special agreement with the commissioners, to use the water supplied through the pipes of the commissioners, except for domestic and ordinary purposes ; but where

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purposes, unless by agreement with commissioners.

there is a supply of water more than is required for such domestic and ordinary purposes within the burgh, it shall be lawful for the commissioners to contract with any person or persons within the burgh to supply any public baths and washhouses, works, manufactories, or other premises within the burgh with water, at such rate and upon such terms and conditions as may be agreed on; or, in the event of disagreement, either as to the ability of the commissioners to give the supply, or as to the rate, terms, or conditions on or in respect of which the supply is to be given, the same shall be fixed by the sheriff, upon summary application by either of the parties, and the decision of the sheriff shall be final: Provided that when water is thus supplied from such surplus, it shall not be lawful for the commissioners to charge the parties obtaining the same both with the *portion of the burgh general assessment applicable to water supply* [water assessment], and also for the supply of water obtained by them; but the commissioners may either charge the said assessment leviable on such premises or charge for the supply of water furnished to the same, as they shall think fit; and it shall also be lawful for the commissioners to dispose of any surplus water, not required for any purpose within the burgh, to any person or persons outside the burgh, at such rate and upon such terms and conditions as may be agreed on.

It shall further be lawful for the commissioners to dispose of any surplus water not required for any of the purposes aforesaid within the burgh to the commissioners or trustees of any harbour or other person owning or managing any harbour within or near to the burgh for the purpose of supplying vessels within the harbour and for the extinction of fires in such vessels, or in any buildings or other property within the limits of the harbour and subject to the administration of such commissioners or trustees of the harbour or other persons, and such commissioners or trustees of the harbour or other persons may demand and levy from the owner, master, agent, manager, or other person in charge of any vessel applying for and receiving such supply of water, a reasonable sum of money in respect thereof, and in the event of disagreement as to the rate, terms, or conditions on which such supply shall be given by such commissioners or trustees of the harbour or other persons to such vessels, the same shall be fixed by the sheriff upon summary application by either of the parties, and the decision of the sheriff shall be final.

By s. 4 (2) of the Burgh Sewerage, etc. Act, 1901, the words italicised were repealed and the words "water assessment" were substituted therefor. See s. 2 of the Act of 1901 as to water assessment.

Supply of water for domestic purposes.

265. A supply of water for domestic and ordinary purposes shall not include a supply of water for cattle or for horses, or for washing carriages, or for steam engines, or for railway purposes, or for warming or ventilating purposes in public buildings, or for working any machine or apparatus, or for any trade, manufacture, or business whatsoever, or for watering gardens by means of any tap, tube, pipe, or other such like apparatus, or for fountains, or for flushing sewers or drains, or for public baths or washhouses, or for any ornamental purpose whatever.

Cf. s. 12 of the Waterworks Clauses Act, 1863, *ante*, p. 539, and see the cases collected at p. 468, *ante*.

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NOTE.

Drinking fountains.

266. The commissioners may from time to time erect and maintain, or allow to be erected and maintained, in any street or public place any ornamental drinking fountain or trough.

Incorporation of certain provisions of the Waterworks Clauses Acts.

267. With respect to the supply of water all the clauses and provisions of the Waterworks Clauses Acts, 1847 and 1863, and any Act amending the same, with respect to the following matters; (that is to say,)

The construction of the waterworks:

The communication pipes to be laid by the inhabitants:

Waste or misuse of the water supplied by the undertakers:

Guarding against fouling the water of the undertakers:

The payment and recovery of the water rates:

The recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices or to the sheriff:

shall, so far as the same are not varied by the provisions of this Act, be incorporated with this Act; and the expression "the undertakers" in the said Waterworks Clauses Acts, shall, in reference to this Act, mean the commissioners under this Act: Provided always, that the water to be supplied by the commissioners need not be constantly laid on under pressure; and provided also, that for shops the water rate, or portion of burgh general assessment applicable to water, shall be chargeable only on one-fourth of the rental of the premises, unless in special circumstances the commissioners see cause to charge the ordinary rates, and in that case it shall be lawful for any person who may think himself thereby aggrieved to appeal to the sheriff in manner hereinafter provided.

See s. 2 of the Burgh Sewerage, Drainage, and Water Supply (Scotland) Act, 1901 (1 Edw. 7, c. 24), *post*, p. 1020.

Byelaws in reference to water.

268. It shall be lawful for the commissioners to make byelaws regulating all or any matters and things whatsoever connected with the water to be supplied within the burgh through their pipes.

These byelaws require confirmation as provided by s. 318.

Provisions with respect to supplying water not to apply in certain cases.

269. The provisions of this Act with respect to supply of water shall not apply in the case of any burgh which is or may be before the thirty-first day of December, one thousand eight hundred and ninety-four supplied with water under the powers of any local Act or Acts.

By the Burgh Sewerage, Drainage, and Water Supply (Scotland) Act, 1901 (1 Edw. 7, c. 24), which came into operation on May 15th, 1902, it is enacted that notwithstanding anything contained in s. 269 the provisions of the Act of 1892 with respect to water supply shall apply in the case of any burgh which is supplied with water by the town council thereof under the powers of any local Act or Acts. See s. 4 (5), *post*, p. 1022.

Byelaws to be confirmed.

318. No byelaws made under the authority of this Act, except such as relate solely to the commissioners or their officers or servants, shall come

Sect. 318. into operation until the same be confirmed by the sheriff, or, in the case of byelaws relating to sanitary matters, by the board of supervision, and authenticated by the signature of the sheriff or the chairman of the board respectively; and it shall be incumbent on the sheriff, on the request of the commissioners, to inquire into any byelaws tendered to him for that purpose, and to allow or disallow the same as he may think fit. Before coming into operation the said byelaws shall also be confirmed by the Secretary for Scotland.

ASSESSMENT FOR GENERAL PURPOSES.

Commissioners to levy burgh general assessment.

340. Once in each year the commissioners (being summoned in manner hereinbefore directed by notices, which shall state that the meeting is for the purpose of laying on an assessment) shall assess all occupiers of lands or premises within the burgh, according to the valuation roll made up, or according to an estimate of the valuation roll about to be made up in terms of the Acts in force for the valuation of lands and heritages in Scotland for the time, subject to the exceptions hereinafter provided, in the sums necessary to be levied for the general purposes of this Act, and shall fix a day on or before which the same shall be payable, and another day upon which appeals by any person complaining that they have been improperly assessed shall be lodged with the clerk or collector, and another day or days on which such appeals shall be heard by the commissioners; and the rate of assessment and day fixed by the commissioners for payment shall be published by handbills posted in the burgh, or by advertisement in one newspaper published or circulating therein: Provided always, that such assessment shall be imposed as from the term of Whit Sunday in any one year to the term of Whit Sunday in the following year, and shall not in any year exceed *a rate equal to four shillings in the pound of the gross yearly rent or value of such lands or premises where the commissioners have supplied or resolved to supply the burgh with water in terms of this Act or otherwise at* a rate equal to two shillings in the pound of the gross yearly rent or value of such lands or premises; and such assessment shall for the purposes of this Act be called the burgh general assessment: Provided further, that when in any burgh under the provisions of any Act of Parliament, a higher rate of assessment is now and has been in use to be levied upon lands or premises above a certain fixed rent than upon lower rental lands or premises, it shall be in the power of the commissioners in laying on the assessment under this Act to continue the same relative rates of assessment if they think proper.

Rate not to exceed 4*s.* in the £ where commissioners supply water. Otherwise 2*s.* in the £.

The Burgh Sewerage, Drainage, and Water Supply (Scotland) Act, 1901, repealed the words italicised. See Sched. to that Act.

Assessments not to be imposed on occupiers of premises under £4.

344. The commissioners shall assess the owners, in place of the occupiers of all lands or premises let at a rent of or under four pounds, and levy such assessment on such owners; but the commissioners shall allow to such owners a deduction from such assessment equal to one-tenth of the amount thereof, and such assessment shall be recoverable from such owners along with any penalty which may have become exigible thereon, in the same way as is herein provided with respect to the recovery thereof from occupiers ; and every such owner charged with and paying such assessment shall have relief against the occupiers of such lands or premises for the full amount thereof without deduction, if and in so far as such assessment may by law be properly chargeable upon such occupier.

Sect. 46 of the Burgh Police (Scotland) Act, 1903, enacts that ss. 343 to 346 inclusive, ss. 348 to 357 inclusive, and s. 370 of this Act, are to apply to all assessments levied by the town council under statutory authority.

345. Owners who shall let for rent, or hire lands or premises for less than a year, shall themselves be responsible for the said assessment, and the same may be recovered from such owners.

When owners responsible.

See note under s. 344.

346. When any lands or premises in respect of which the said assessment might be imposed upon the occupier, not being premises usually let for any period shorter than one year, shall not be occupied by the same occupier for the whole year from the term of Whit Sunday in any year till the term of Whit Sunday in the year following, but shall be occupied for part of such year by a new occupier, it shall be lawful to the commissioners to impose and levy on and from such new occupier who occupies the same for any part of such year, whether his name appear in the valuation roll or not, a proportion of such assessment for that year, corresponding with the period of his occupancy, and on and from the owner of such lands or premises the proportion of such assessment, if any, corresponding with the period during which such lands or premises were occupied during the said year by any other occupier.

Assessment on premises occupied for part of a year.

See note under s. 344.

347. The annual value of the following lands or premises shall, for the assessments under this Act, be held to be one-fourth of the annual value thereof entered in the said valuation roll, viz. :

Arable land, etc., how to be valued.

1. All lands and premises used exclusively as a canal or basin of a canal, or towing path for the same, or as a railway or tramway, constructed under the powers of any Act of Parliament for public conveyance, excepting the stations, depôts, and buildings, which shall be assessable to the same extent, as other lands and premises within the burgh, and all bridges, frontages, and ferries not being private property :
2. All the underground gas and water pipes, or underground works of any gas or water company or corporation :

   Underground gas and water pipes.
3. Salmon fishings, and all woodland, arable, meadow, or pasture ground, or other ground used for nurseries, market gardens, or for agricultural purposes :

and where the commissioners shall have supplied or resolved to supply the burgh with water *in terms of this Act*, the annual value of all quarries

Sect. 347. and manufactories within the burgh shall, as regards the *burgh general assessment, so far as is applicable to water,* [water assessment] subject to the exception herein-after provided, be held to be one-fourth of the annual value thereof entered in the valuation roll; without prejudice, however, to the commissioners entering into agreements for the supply of water to such lands and premises in manner herein-before provided; and in the event of any dispute arising as to the lands and premises falling under the above exceptions, it shall be lawful for the owner or occupier of such lands and premises to present a petition to the sheriff, praying to have the same declared, for the time being, liable to assessment upon the said proportion of their value only; the judgment, if by the sheriff substitute, may be appealed to the sheriff, whose decision shall be final: Provided always, that where in any burgh such lands or premises as are in this section specified were prior to the passing of this Act liable to be assessed under any general or local police Act or under the Public Health Acts or the Local Government (Scotland) Act, 1889, on the annual value thereof, and moneys have been borrowed on the security of the assessments so authorised, or some of them, such lands or premises shall, in the the case of any such burgh where the assessments on the security of which such moneys have been borrowed have been imposed, be liable to be assessed on the annual value thereof and in the same manner as heretofore until such borrowed moneys have been repaid.

By ss. 4 (3), 7, and Schedule of the Burgh Sewerage, Drainage, and Water Supply (Scotland) Act, 1901, the words italicised were repealed and the words in brackets were inserted. It had, before the repeal of the words "in terms of this Act," been held that the restriction contained in the section was applicable to the assessment under the Public Health Act, 1897, for works established under that Act (*Hawick Commissioners* v. *Watson* (1901), 38 S. L. R. 650).

PUBLIC HEALTH (SCOTLAND) ACT, 1897.

(60 & 61 VICT. C. 38.)

PART I.

AUTHORITIES FOR EXECUTION OF ACT.

Central Authority.

Local Government Board to be central authority. 57 & 58 Vict. c. 58.

5. The Local Government Board for Scotland (in this Act referred to as the Board) shall be the central authority for the execution of this Act. In addition to the powers conferred on or transferred to it by the Local Government (Scotland) Act, 1894, the Board shall have the powers hereinafter mentioned.

Local Authorities. *

12. The following shall respectively be the local authority to execute this Act within the districts hereunder stated :

Local authorities to execute Act.

(1.) In burghs subject to the provisions of the Burgh Police (Scotland) Act, 1892, † the town council or burgh commissioners :

(2.) In other burghs, the town council or board of police, as the case may be :

(3.) In districts where the county is divided into districts under the Local Government (Scotland) Act, 1889, and, subject to the provisions of section seventeen of that Act, as amended by this Act, the district committee :

52 & 53 Vict. c. 50.

(4.) In counties where the county is not so divided, the county council, subject to the provisions of section seventy-eight, sub-section three, of the Local Government (Scotland) Act, 1889, as amended by section nineteen, sub-section seven, of the Local Government (Scotland) Act, 1894. ‡

57 & 58 Vict. c. 58.

Provided always that wherever, except in regard to a burgh, the expression " local authority " is in this Act used with reference to rating, borrowing, or acquiring or holding land, it shall mean the county council, but this proviso shall not be construed to extend or diminish the exemption from stamp duties contained in section one hundred and sixty-eight of this Act.

13. Where any parish or burgh shall be situated in more than one county, the Board shall, on application being made to them by any person having interest, determine in which one of such counties such parish or burgh shall be held to be situated for the purposes of this Act, whose decision shall be final ; and the jurisdiction and powers of magistrates, justices, and sheriffs, and the powers of their officers under this Act, shall be regulated accordingly, and the Board may from time to time recall or vary such determination.

Where district in more than one county.

PART VI.

SEWERS, DRAINS, AND WATER SUPPLY.

Water Supply.

124. With respect to burghs subject to the provisions of the Burgh Police (Scotland) Act, 1892, or having a local Act for police or other purposes nothing contained in this Act shall prejudice the provisions of any of the said Acts in regard to the provision of a supply of water for the domestic use of the inhabitants and for sanitary and other purposes. Provided that in the Burgh Police (Scotland) Act, 1892, and in the Lands Clauses Acts, so far as incorporated therewith, or authorised thereby to

Supply of water for burghs. 55 & 56 Vict c. 55.

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* See ss. 5—7 of 1 Edw. 7. c. 24, *post*, p. 1022.

† Amended by 3 Edw. 7, c. 33.

‡ Sect. 19 (7) of the Act of 1894 has been amended by the Burgh Police (Scotland) Act, 1903, s. 94.

Sect. 124. be put in force the term "land" shall include water and any right or servitude to or over land or water.

Local authority to require water to be supplied to houses in certain cases.

125. If any occupied house within the district of any local authority other than the local authority of a burgh is without a proper supply of wholesome water at or reasonably near the same, the local authority shall require the owner to obtain such supply and to do all such works as may be necessary for that purpose, and failing his doing so, within twelve months after due notice, the local authority may themselves obtain such supply and for that purpose may use their powers of acquiring land by agreement or otherwise under this Act; and may, for the purpose of obtaining such supply, enter upon the premises and execute all such works as may be necessary; and the local authority may recover in a summary manner from the owner the whole or a reasonable part of the expenses incurred by them under this section: Provided that where the owners of two or more houses have failed to comply with the requirements of the notice served on them under this section, and the local authority might under this Act execute the necessary works for providing a water supply for each house, the local authority may, if it appears to them desirable and no greater expense would be occasioned thereby, execute works for the joint supply of water to those houses, and apportion the expenses as shall be just, and further provided that if any question shall arise under this section it shall be determined summarily by the sheriff who shall have regard to all the circumstances of the case, and whose decision shall be final. Provided that nothing in this section shall relieve the local authority from the duty of providing their district or any part thereof with a supply of water, where a general scheme for such supply is required, and can be carried out at a reasonable cost.

Supply of water for districts other than burghs.

126. With respect to districts other than burghs the following provisions shall have effect:

(1.) The local authority, if they think it expedient so to do, may acquire and provide or arrange for a supply of water for the domestic use of the inhabitants and for sanitary and other purposes, and for that purpose may acquire and conduct water from any lake, river, spring, or stream, may dig wells, make and maintain reservoirs, may purchase, take upon lease, hire, construct, lay down, and maintain such waterworks, pipes, and premises, and do and execute all such works, matters, and things as shall be necessary and proper for the aforesaid purpose, and may themselves furnish a supply of water, or contract or arrange with any other person to furnish the same; and for the purposes aforesaid the local authority shall be held to have all the powers and rights given to and be subject to all the obligations imposed on the promoters of undertakings by the Lands Clauses Acts as amended by this Act: Provided also, that it shall not be lawful for the local authority to provide or supply water within any area which any local authority or any company, established by Act of Parliament or empowered by or authorised by provisional order, is authorised to supply with water, unless the local authority shall previously have purchased or acquired the undertaking of such local authority or company.

(2.) The local authority, if they have any surplus water after fully supplying what is required for domestic and sanitary purposes, may supply water from such surplus to any public baths and wash-houses, or for trading or manufacturing and all other than domestic purposes, on such terms and conditions as may be agreed on between the local authority and the persons desirous of being so supplied. Provided that when water is thus supplied from such surplus it shall not be lawful for the local authority to charge the persons so supplied both with the portion of the special water assessment applicable to the buildings or premises supplied, and also for the supply of water obtained ; but the local authority may either charge the said assessment leviable on such buildings or premises, or charge for the supply of water furnished to the same as they think fit, and the local authority shall have the same remedies and powers of recovering payment of such water rents or payments as are herein-after provided with regard to the special water assessment.

Under the Public Health (Scotland) Act, 1867, s. 89, which empowered the local authority of burghs with a population of less than 10,000, to provide a supply of water for the domestic use of the inhabitants, it was provided by sub-s. (3) that "the local authority, if they have any surplus water after fully supplying what is required for domestic purposes, may supply water from such surplus to any public baths and washhouses, or for trading or manufacturing purposes, on such terms and conditions as may be agreed on between the local authority and the persons desirous of being so supplied." A local authority exercising the powers of that section, took on lease for 999 years, seven acres of land, with the whole water which drained into that area, it being stipulated by the lease that the powers and privileges thereby granted "shall be held inalienably in trust by the local authority, for the use and behoof of the community of the burgh under the provisions of the Public Health (Scotland) Act, 1867, . . . and it shall not be in the power of the local authority to supply the water either gratuitously or for onerous causes to any person or corporation outwith the boundaries of the burgh." The local authority, without the consent of the lessor, supplied a railway company which had a station in the burgh with water for the engines of trains passing through the burgh. In a question between the lessor and the local authority, held (*dub.* the Lord Justice Clerk) that, on a sound construction of the lease, the local authority were entitled to supply the railway company, as part of the trading community within the burgh, with the water they required for trading purposes (*Seton* v. *Commissioners of the Burgh of Linlithgow* (1900), Ct. of Sess. Cas., 2 Fraser, 907).

(3.) The local authority may cause all existing public cisterns, pumps, wells, reservoirs, conduits, aqueducts, and works used for the gratuitous supply of water to the inhabitants to be continued, maintained, and plentifully supplied with water, or may substitute, maintain, and plentifully supply with water other such works equally convenient ; and may, if they shall think fit, provide and gratuitously supply

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water for any public baths or wash-houses established otherwise than for private profit or supported out of any rates.

A well which is situated on private land, but which has been gratuitously used for domestic purposes by the inhabitants of the vicinity for the prescriptive period, was held to be a public well within the corresponding section (89) of the Public Health (Scotland) Act, 1867, and the local authority were held to be entitled to enter upon the land and do all acts necessary for continuing and maintaining the well which the inhabitants could have done; although there was a company with a vested right to supply the inhabitants with water (*Smith* v. *Archibald* (1880), 5 App. Cas. 489; *Smith* v. *Police Commissioners of Denny* (1880), 7 Ct. of Sess. Cas. (4th series), 28). See *ante*, p. 871, for cases under the corresponding section of the English Public Health Act, 1875.

(4.) The local authority shall have the same powers and be subject to the same restrictions for carrying water mains within their district as they have and are subject to for carrying sewers within their district by the law for the time being in force.

Cf. the corresponding section of the Public Health Act, 1875, *ante*, p. 856.

Penalty for causing water to be corrupted by gas washing, etc.

127. Any person engaged in the manufacture of gas, naphtha, vitriol, paraffin, or dye stuffs, or any other deleterious substance, or in any trade in which the refuse produced in any such manufacture is used who shall at any time cause or suffer to be brought or to flow into any stream, reservoir, aqueduct, well, or pond, or place for water, constructed or used for the supply of water for domestic purposes, or into any pipe or drain communicating therewith, any product, washing, or other substance produced in any such manufacture, or shall wilfully do any act connected with any such manufacture, whereby the water in any such stream, reservoir, aqueduct, well, pond, or place for water shall be fouled, and any person who shall wilfully do or permit to be done any act whereby the water in any stream, reservoir, aqueduct, well, pond, or place constructed or used for the supply of water for drinking or other domestic purposes shall be fouled, shall forfeit for every such offence a sum not exceeding fifty pounds.

Penalties to be sued for within six months.

128. Such penalty may be recovered, with expenses, by the person into whose water such product, washing, or other substance shall be conveyed or shall flow, or whose water shall be fouled by any such act as aforesaid, or in default of proceedings by such person, after notice to him from the local authority of their intention to proceed for such penalty, or if there be no such person, by the local authority; but such penalty shall not be recoverable unless it be sued for during the continuance of the offence, or within six months after it shall have ceased.

Daily penalty during continuance of offence.

129. In addition to the said penalty (and whether such penalty shall have been recovered or not), the person so offending shall forfeit a sum not exceeding five pounds (to be recovered in the like manner) for each day during which such product, washing, or other substance shall be brought or shall flow as aforesaid, or during which the act by which such water shall be fouled shall continue, after the expiration of twenty-four hours from the time when notice of the offence shall have been served on such person by the local authority, or by the person into whose water such product, washing, or other substance shall be brought or flow, or whose water shall be fouled thereby, and such penalty shall be paid to the local authority or person from whom such notice shall proceed; and all moneys recovered by the local authority under this or the preceding section shall, after payment of any damage caused by the act for which the penalty is imposed, be applied towards defraying the expenses of executing this Act.

Local authorities may combine as to water supply.

130. Two or more local authorities may, with the sanction of the Board, combine together for the purpose of executing or acquiring an interest in or maintaining any works by this Act or any other Act authorised in regard to water supply that may be for the benefit of their respective districts; and all moneys which they may agree to contribute for the execution or acquisition or maintenance of such common works shall, in the case of each local authority, be deemed to be expenses incurred by them in the execution, acquisition, or maintenance of works within their district.

Special water supply districts.

131.—(1.) Upon requisition to that effect made in writing by a parish council or by not fewer than ten ratepayers within the district, the local authority, not being the local authority of a burgh, shall be bound to meet, after twenty-one days notice, or, if the local authority itself so resolve, it may meet after twenty-one days notice, and shall, whether water supply has been already provided or not, consider the propriety of—

(a) forming part of their district into a special water supply district; or

(b) enlarging or limiting the boundaries of a special water supply district; or

(c) combining a special water supply district with another special water supply district; or

(d) enlarging or limiting the boundaries of both or either of such special water supply districts, and combining the same or parts thereof; or

(e) determining that any special water supply district shall cease to exist as a special water supply district, or that any such combination shall cease:

and the resolution of the local authority shall determine all questions regarding the payment of any debt which may affect any district or special water supply district, and the right to impose and the obligation to pay any assessment affected by such determination, and shall fix the date at which such determination shall take effect; and such resolution shall be published in one or more newspapers circulating in the district, or by the posting of handbills throughout the district, and a copy of said resolution shall be forthwith transmitted to the Board, and where the local

Sect. 131. authority is a district committee to the county council; and the production of such newspaper or handbill, or a certificate under the hand of the clerk of the local authority (whose signature need not be proved), shall be sufficient evidence of such resolution; and within twenty-one days after the date of the first publication of such resolution it shall be competent for any person interested to appeal against the resolution (whatever its terms may be) to the sheriff; and the sheriff, not being a sheriff substitute resident within the district, may either approve or disapprove of such resolution; and if he disapproves thereof he may either find that no special water supply district should be formed, or may enlarge or limit the special district as defined by the resolution of the local authority, or may find that a special water supply district should be formed, and may define the limits thereof, or may find that such special water supply district or part thereof shall be combined as prayed, or that such combination shall cease, or that such special water supply district or districts shall, as such, cease to exist; and the decision of the sheriff shall be binding, and shall be final, except where it is pronounced by a sheriff substitute, in which case it may be appealed to the sheriff.

"District" means the district of the local authority, and is not limited to either the area proposed to be added, or to that and the original special water supply district (*Kenneth & Sons* v. *Ayrshire C. C.* (1900), 2 Fraser (Ct. Sess.), 511).

(2.) The order of the sheriff shall determine all questions regarding the payment of any debt which may affect any district or special water supply district, and the right to impose and the obligation to pay any assessments affected by his determination, and shall fix the date at which such determination shall take effect; and a copy of said order shall be forthwith published in one or more newspapers circulating in the district, or by the posting of handbills throughout the district and transmitted to the Board and to the county council.

52 & 53 Vict. c. 50.

(3.) Notwithstanding the provisions of section seventeen, sub-section two, sub-head (c) of the Local Government (Scotland) Act, 1889, it shall not be competent to appeal to the county council against any resolution of a district committee under this section.

57 & 58 Vict. c. 58.

(4.) Nothing contained in this Act shall prejudice the provisions of sub-sections one and two of section eighty-one of the last-mentioned Act as amended by section forty-four of the Local Government (Scotland) Act, 1894.

By the Burgh Sewerage, Drainage, and Water Supply (Scotland) Act, 1901 (1 Edw. 7, c. 24), which came into operation on May 15th, 1902, it is enacted by s. 5 that that Act shall not apply to the section in the text. See the Act, *post*, p. 1020.

Special water supply districts.

The corresponding section of the repealed Act of 1867 was s. 89 (5). The powers of the Act of 1897 in this respect have been largely put into operation. In their report for 1899 the Local Government Board of Scotland say (p. xl, Parliamentary Paper, 1900, Cd. 182): "In terms of section 131 (1) of the Act, copies of resolutions as to the formation of special water supply districts were forwarded to us by thirty local authorities. In twenty-two cases the local authorities resolved to form districts, in six cases to enlarge existing districts, in one case to enlarge and limit an existing district, and in the other case the local authority resolved to combine two special districts."

NOTE.

Well-water supplies.

The following passage from the same report as to what may be done short of the formation of a special water supply district, may be here reproduced: "We have all along recognised the difficulty of providing gravitation water supplies for scattered townships extending over miles, and having regard also to the poverty of many of the sparsely populated rural districts we have frequently pointed out that, as a rule, substantial improvement can be effected in water supplies from local wells at little cost by cradling, cleansing, and protecting them from surface contamination, and removing from their neighbourhood gross sources of pollution, such as middens, drains, etc., or by digging new wells. We are satisfied that with or without the creation of special water supply districts a great improvement at comparatively trifling outlay might in this way be effected in townships and scattered villages. The duty of a local authority is not confined to large schemes, but includes any and every way or operation by which wholesome water may be provided. We are advised that a local authority have no right to require those who have a right of common use of public wells to cleanse, purify, or maintain them, or to undertake works for the protection of springs from surface water or other liability to pollution. This is the duty of the local authority, and unless a water supply district has been formed the expenses must be borne by the whole district" (p. xxxvii).

As to the formation of special drainage or water supply districts, see s. 81 of the Local Government (Scotland) Act, 1889, *ante*, p. 990.

A proprietor, whose lands lay outside a special water supply district, agreed to grant wayleave for the water pipes for the conveyance of water to the district on condition that the county council should allow him, "at any time he may think expedient to call upon the said local authority to do so, to include the lands" of A. and B. on the proprietor's estate "to be connected with the special water supply district and to be assessed therefor at the same rate as the property already included in that district." The proprietor exercised his option, and laid the necessary pipes, and for one year he paid an assessment in terms of the contract. He then disconnected the pipes, and intimated that he did not thereafter intend to avail himself of the water supply. In a special case the county council maintained that the proprietor, having once taken water from their supply, was bound thereafter in all time coming to pay assessments under the contract whether he continued to take water or not:—*Held*, that under the contract the proprietor was entitled to cease taking water whenever convenient to him, and that when he did so he was no longer bound to pay assessment. *Observed* that it was *ultra vires* of the county council to include lands in an already existing water supply district (*Maconochie Welwood* v. *Midlothian C. C.* (1894), Ct. of Sess. Cas., 22 Rettie, 56).

The Secretary for Scotland determined, under sub-s. (2) of s. 81 of the Local Government (Scotland) Act, 1889, that a police burgh should be represented in the proportion of eight members to six members appointed by the county council. It was held that this determination was *ultra vires*, and the same was reduced (*Dumbartonshire C. C.* (*Eastern District Committee of*) v. *Clydebank Police Commissioners* (1893), Ct. of Sess. Cas., 21 Rettie, 12).

In 1873 a special water supply district was formed in a parish. In 1886 part of the district was formed into a police burgh. In a question raised in 1894 between the county council and the police commissioners of the burgh:—*Held* (1) that although the police commissioners were within the burgh the local authority for general purposes under the Public Health Act, the district committee of the county council was, under s. 81 of the Local Government Act, 1889, the local authority for the whole special water supply district, including the part within the burgh, in so far as water supply was concerned; (2) that the county council was alone entitled to impose and levy assessments throughout the whole water district for water supply purposes; and (3) that all the disbursements in connection with the water supply district fell to be paid by the county council out of the county fund on the requisition of the

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NOTE.

In 1876 the parochial board of Wemyss, as the local authority under the Public Health Act, 1867, introduced a water supply for the whole parish from a source outside the parish, the only works within the parish being the distributing mains. On the passing of the Local Government (Scotland) Act, 1889, the Kirkcaldy district committee of the county council of Fife came in place of the parochial board as local authority, and the waterworks were vested in them. The requisite expenditure was levied upon the whole property in the parish. In 1891 a district of the parish was created a police burgh, and subsequently formed into a special water supply district. In 1892 the remaining part of the parish was formed into a special water supply district. The existing system of waterworks for the supply of the whole parish was continued. In a question between the district committee of the county council and the police commissioners of the burgh :—*Held* (1) that the water supply and waterworks fell to be managed by the sub-committee of the district committee appointed under s. 81, and the police commissioners (or so many of the police commissioners as the sheriff should fix as a committee) jointly ; and (2) that the police commissioners were alone entitled to impose and levy the necessary assessments within the burgh (*Kirkcaldy District Committee* v. *Police Commissioners of Buckhaven* (1895), Ct. of Sess. Cas., 23 Rettie, 107). See, further, the cases cited under s. 137 of the Public Health (Scotland) Act, 1897.

Of a farm of 223 acres, nine acres, including the farmhouse and steadings, lay within a special water supply and drainage district. The assessor, in valuing the nine acres, included the value of the buildings thereon :—*Held*, that the farm, with the farm buildings, should have been valued together as one, and the amount distributed proportionally to acreage (*Irvine* v. *Assessor for Aberdeenshire* (1897), Ct. of Sess. Cas., 24 Rettie, 741).

A local authority brought an action in the sheriff court to have the proprietors of certain lands within the sheriffdom—through which a pipe belonging to the local authority was laid—interdicted from drawing water from the pipe for a portion of their lands. The proprietors were resident beyond, and were not served with the action within the sheriffdom. It was held that the sheriff had jurisdiction as the lands were within his sheriffdom (*Culross Special Water Supply District Committee* v. *Smith-Sligo's Trustees* (1891), Ct. of Sess. Cas., 19 Rettie, 58).

Minister's manse water rates.

The heritors of a parish are not bound to relieve the minister of water rates imposed upon him by the local authority in consequence of the manse having been included in a special water supply district (*Smith* v. *Prestonpans, Heritors of* (1903), 40 S. L. R. 303 ; *County Council of Elgin* v. *Hogarth* (1903), 11 Sc. L. T. Rep. 316 (before sheriff)).

Incorporation of Waterworks Clauses Acts.

132. The following Acts and parts of Acts, so far as the same respectively are applicable for the purposes, and are not inconsistent with the provisions of this Act, are hereby incorporated with this Act :

10 & 11 Vict. c. 17.

The Waterworks Clauses Act, 1847, except the provisions with respect to the amount of profit to be received by the undertakers when the waterworks are carried on for their benefit, and except the words in section forty-four thereof, " with the consent in writing of the owner or reputed owner of any such house or of the agent of such owner " :

26 & 27 Vict. c. 93.

The Waterworks Clauses Act, 1863 :

8 & 9 Vict. c. 33.

The provisions of the Railways Clauses Consolidation (Scotland) Act, 1845, with respect to the temporary occupation of lands near the railway during the construction thereof, but such last-mentioned provisions shall apply only in the case of any reservoir, filter, or distributing tank, which the local authority may be authorised to construct, and the works

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immediately connected therewith, and for the purposes of this Act those provisions shall be read as if such reservoir, filter, or tank, and works, were therein mentioned instead of "the railway," and the boundaries of such reservoir, filter, or tank, and works, instead of "the centre of the railway," and the prescribed limits shall be two hundred yards from such boundaries:

Provided always that—

(a) the local authority shall not be obliged to furnish a supply of water to any person for any less sum than five shillings in any one year;

(b) no person shall be entitled to demand such supply of water, or to require the local authority to lay down communication pipes, unless some pipe of the local authority shall have been laid within one hundred feet of the house or other premises in respect of which such supply or communication pipes are demanded, or unless the local authority shall become bound by virtue of a requisition and agreement made and executed in the manner and to the extent required by the Waterworks Clauses Act, 1847, to cause pipes to be laid down within the said distance of one hundred feet of such house or other premises; 10 & 11 Vict. c. 17.

(c) the water to be supplied by the local authority need not be constantly laid on under pressure.

PART VII.

RATING AND BORROWING POWERS.

Assessments.

133. [*Special sewer assessment.*]

Special water assessment.

134. [*In any burgh, or where any special water supply district has been formed under this Act or any of the Acts hereby repealed, the expense incurred by the local authority for water supply within the same or for the purposes thereof, and the sums necessary for payment of any money borrowed therefor either before or after the passing of this Act, together with the interest thereof, shall be paid out of a special water assessment which the local authority shall raise and levy on and within such burgh or special district, in the same manner and with the same remedies and modes of recovery as are hereinafter provided for the public health general assessment.*

Provided that where a special water supply district has been formed under the provisions of this Act or any of the Acts hereby repealed or of any Act, and a sufficient supply of water has been obtained and is maintained under the authority of such Act, the lands and premises situated within such special district shall not be liable to assessment for the expense of supplying water to other parts of the district of the local authority]

See note to s. 137, *infra*.

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135. [*General assessments in districts other than burghs.*]

136. [*General assessments in burghs.*]

Limit of assessment.

137. [*The public health general assessment by this Act authorised, which shall be imposed upon all lands and heritages within the district, including any special drainage or special water supply district, shall not exceed the rate of one shilling in the pound.*

The special sewer assessment, and the special water assessment, exclusive of the public health general assessment, shall not in any burgh or special drainage or special water supply district exceed the rate of three shillings in the pound. Provided that if the produce of a rate of three shillings in the pound in any burgh or special drainage or special water supply district shall not be sufficient to meet the expenditure bonâ fide incurred or contemplated within such burgh or special district, it shall be lawful to increase such rate to such extent as may have been approved by the Board; provided also, that it shall not be lawful to impose any rate in respect of the expenditure within any special district upon any premises without such special district.]

By the Burgh Sewerage, Drainage, and Water Supply (Scotland) Act, 1901 (1 Edw. 7, c. 24), ss. 133, 134, and 137 are repealed in so far as the same apply to burghs to which that Act applies from the commencement. See the provisions of that Act as to assessments in s. 2, *post*, p. 1020.

It was held under the Act of 1867 that when a special water supply and drainage district had been formed, it was competent for the local authority (1) to borrow money on the security of the whole assessments which the local authority could impose, and (2) after imposing the maximum assessment on the special district to assess the remainder of the general district if necessary for payment of the loan and interest (*Tolmie* v. *Parochial Board of Urray* (1890), Ct. of Sess. Cas., 17 Rettie, 1027). See *Local Government Board for Scotland* v. *Elgin C. C.* (1897), Ct. of Sess. Cas., 24 Rettie, 512, cited under s. 147, *post*, p. 1017, and the remarks of the Lord President in that case on the subject of *Tolmie's Case.* Further as to expense of forming special district see *Inverarity* v. *Forfarshire C. C.*, [1906] A. C. 354.

A parochial board as the local authority for the parish under the Public Health Act, 1867, having formed a special water supply district, entered into an agreement with the police commissioners of a neighbouring burgh, whereby, in consideration of obtaining a supply of water for the special water district, the parochial board agreed to assess the inhabitants of the special water district at the same rate as the inhabitants of the burgh were assessed, and to pay over the proceeds to the commissioners:—*Held*, that the agreement prescribed a mode of assessment for the special water district which was not in accordance with the statutory powers of the local authority imposing the assessment, and that, in so far as it did so, it was invalid (*Wordie's Trustees* v. *Lanarkshire C. C.* (1895), Ct. of Sess. Cas., 23 Rettie, 168).

138. [*Burghs not to be assessed for public health rate in counties.*]

Borrowing Powers.

139. [*Power of borrowing for sewers.*]

Power of borrowing for water supply

140. It shall be lawful for the local authority to borrow for the purpose of constructing, purchasing, enlarging, or reconstructing such works as are herein authorised for providing a supply of water for the use of the inhabitants of the district, or for the purpose of entering into and implementing any contract or arrangement with any person for such supply, and on the security of the special water assessments, where such exist, or of public health general assessments, as the case may be, such sums of money, and at such times, as the local authority shall deem necessary for that purpose, and to assign the said special water assessments and public health general assessments, as the case may be, in security of the money to be so borrowed; and the bonds to be granted on such borrowing and transferences or assignations and discharges thereof may be in or near to the forms contained in the Second Schedule hereto annexed; and such bonds shall be signed by two members and the clerk of the local authority, and shall constitute a lien over the assessments thereby assigned, and shall entitle the creditors therein to recover the sums thereby due out of the first and readiest of the said assessments; but no such member or clerk shall be personally liable for the repayment of such money so borrowed, and all such obligations shall be deemed and taken to be granted on the sole security of the assessments thereby assigned, and the money so borrowed shall be repayable either in one sum or by instalments, as may be arranged between the borrower and the lender, but so that the same shall be wholly repaid, together with the accruing interest, within thirty years from the date of the loan; but the amount of such loans, including interest, shall form a charge against the assessments of the years intervening between the date of such loans and the date of full repayment; and the money so borrowed as aforesaid shall be applied for the purposes specified in this section and for no other purpose whatsoever.

PART VIII.

ACQUISITION OF LANDS.

Power to acquire lands.

144. A local authority may for any of the purposes of Part II., Part III., and Part IV. of this Act in terms of the Lands Clauses Acts, and whether by agreement or otherwise, purchase any lands within or without their district, and may by agreement take on lease, sell or exchange any lands within or without their district; they may also buy up any water-mill, dam, or weir, which interferes with the proper drainage of or supply of water to their district. They may also, with the sanction of the Board, sell or let any surplus land, and shall apply the proceeds in such manner, whether to the reduction of debt or otherwise, as the Board shall direct.

By s. 3 the word "land" in this Act and in the Acts incorporated therewith includes water and any right or servitude to or over land or water.

A local authority are not bound to purchase lands through which they may carry a sewer under the powers of this Act (*Caledonian Rail. Co.* v. *Perth District Committee* (1901), 3 F. 1029).

Regulations as to compulsory purchase of land, etc.

145. The following regulations shall be observed with respect to the purchase and taking of land otherwise than by agreement by local authorities for the purposes herein-before mentioned:

(1.) The local authority before applying to the Board for an order empowering them to put in force the powers of the Lands

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Clauses Acts with respect to the purchase and taking of land otherwise than by agreement shall—

publish once at least in each of two consecutive weeks in some newspaper circulated in the district or some part of the district where the land is proposed to be taken, an advertisement describing shortly the purpose for which it is proposed to be taken, naming a place where a plan of the proposed works and of the lands which may be taken and a book of reference to such plan may be seen at all reasonable hours, and stating the quantity of land they require; and shall further

serve a notice in manner herein-after mentioned on every owner or reputed owner, lessee or reputed lessee, and occupier of such land, defining in each case the particular land intended to be taken, and requiring an answer, stating whether the person so served assents, dissents, or is neuter in respect of taking such land; such notice to be served

by delivery of the same personally to the person on whom it is required to be served, or, if such person is absent abroad, to his agent; or

by leaving the same at the usual or last known place of abode of such person as aforesaid; or

by forwarding the same by post in a registered letter addressed to the usual or last known place of abode of such person.

Every such plan shall be drawn on a scale of not less than four inches to a mile, and the book of reference shall contain the names of the owners and lessees or reputed owners and lessees and of the occupiers of the lands which may be taken:

(2.) Upon compliance with the provisions herein-before contained with respect to advertisements and notices, the local authority may, if they shall think fit, present a petition to the Board; the petition shall state the land intended to be taken, and the purposes for which it is required, and the names of the owners, lessees, and occupiers of land who have assented, dissented, or are neuter in respect of the taking of such land, or who have returned no answer to the notice; it shall pray that the local authority may, with reference to such land, be allowed to put in force the powers of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement, and such prayer shall be supported by such evidence as the Board requires:

(3.) Upon receipt of such petition, and upon due proof of the proper advertisements having been published and notices served, the

Board shall take such petition into consideration, and may either dismiss the same or direct an inquiry in the district in which the land is situate, or otherwise inquire as to the propriety of assenting to the prayer of such petition; but until such inquiry has been made in the district after such notice as may be directed by the Board, no order shall be made affecting any land without the consent of the owners, lessees, and occupiers thereof.

Any such inquiry may be held by a person appointed by the Board in the manner and with the powers herein-before provided, or if the Secretary for Scotland by any writing under his hand shall so direct, such inquiry shall be held by the sheriff, not being a sheriff substitute resident within the district:

(4.) After the completion of the inquiry as last aforesaid, the Board may, by provisional order, empower the local authority to put in force, with reference to the land or any part of the land referred to in such order, the powers of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement, and may make such determination as they may think fit in regard to the payment of costs by the local authority either to the Board or any person affected by the order; provision shall be made by such order for the incorporation therein of the Lands Clauses Acts and (with the necessary modifications) of sections six and seventy to seventy-eight of the Railways Clauses Consolidation (Scotland) Act, 1845. It shall be the duty of the local authority to serve a copy of any order so made in the manner and upon the persons in which and upon whom notices in respect of such land are hereinbefore required to be served, together with a statement that the order will become final and have the effect of an Act of Parliament, unless within two months a memorial shall be presented to the Secretary for Scotland praying that the order shall not become law without confirmation by Parliament:

(5.) If no memorial shall be presented as aforesaid the order shall become final and have the effect of an Act of Parliament:

(6.) If a memorial has been presented to the Secretary for Scotland, it shall be lawful for him, as soon as conveniently may be, to submit such order to Parliament for confirmation, and any Act passed to confirm such order shall be deemed to be a public general Act of Parliament:

(7.) Every Bill for confirming any such order shall after the second reading in the House in which it originates, be referred to a select committee, or, if the two Houses of Parliament think fit so to order, to a joint committee:

(8.) If, before the expiration of seven days after the second reading of any such confirmation Bill in the House in which it

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originates, a petition is presented against any order comprised therein, the petitioner shall be allowed to appear and oppose by himself, his agents, and witnesses:

(9.) The committee by a majority may award costs, which shall unless the committee otherwise direct, include all costs from the date of the memorial:

(10.) All costs, charges, and expenses incurred in relation to any application for, or the grant of, such order or provisional order shall, to such amount as the Board may think proper to direct, become a charge upon the public health general assessment, or special sewer assessment, or special water assessment, levied in the district, or special drainage district or special water supply district, as the case may be, to which such order or provisional order relates.

(11.)—(a.) Any question of disputed compensation under an order or provisional order made under this section shall be referred to the arbitration of a sole arbiter appointed by the parties, or if the parties do not concur in the appointment of a sole arbiter then, on the application of either of them, by the Board, and the remuneration to be paid to the arbiter shall be fixed by the Board. An arbiter appointed under this sub-section shall be deemed to be a sole arbiter within the meaning of the Lands Clauses Acts, and the provisions of those Acts with respect to an arbitration shall apply accordingly; and the arbiter shall, notwithstanding anything in the said Acts, determine the amount of the expenses in the arbitration, and such determination shall be final; and

(b.) In construing for the purposes of this section any Acts incorporated with, or put in force under, this section, this Act, together with any order or provisional order under this section shall be deemed to be the special Act:

(12.) At any inquiry or arbitration held under this section, the person or persons holding the inquiry or arbitration shall hear any authorities or parties whose interest would be affected, by themselves or their counsel or agents, and may hear witnesses:

(13.) The Board shall not make any order for purchasing the whole or any part of any park, garden, pleasure-ground, or other land required for the amenity or convenience of any dwelling-house, or any land the property of a railway company or canal company which is or may be required for the purposes of their undertaking, or any land which, in the opinion of the Board, is being held or may be required for the extension of a factory or public work:

(14.) The Board shall, in making an order for purchasing land, have regard to the extent of land held in the neighbourhood by any owner, and to the convenience of other property belonging to the same owner, and shall, as far as is practicable, avoid taking an undue or inconvenient quantity of land from any one owner:

(15.) The expression "Act of Parliament" in the Telegraph Act, 1878, shall include an order under this section, although such order may not have been confirmed by Parliament:

41 & 42 Vict. c. 76.

(16.) The Board shall in their annual report include a statement of any proceedings under this section.

A local authority, which had by agreement acquired right to take water from a stream on the land of an upper heritor, were held not to be entitled to divert water from the stream to the prejudice of a lower riparian proprietor, without acquiring from him a right to water in the mode prescribed by s. 90 of the Public Health (Scotland) Act, 1867 (*Commissioners of Peterhead* v. *Forbes* (1895), Ct. of Sess. Cas., 22 Rettie, 852).

Provision for refusal or neglect of local authority.

147. In case any local authority shall refuse or neglect to do what is herein or otherwise by law required of them, or in case any obstruction shall arise in the execution of this Act, it shall be lawful for the Board, with the approval of the Lord Advocate, to apply by summary petition to either division of the Court of Session, or during vacation or recess to the Lord Ordinary on the Bills, which division or Lord Ordinary are hereby authorised and directed to do therein and to dispose of the expenses of the proceedings as to the said division or Lord Ordinary shall appear to be just.

Since the Burgh Sewerage, Drainage, and Water Supply (Scotland) Act, 1901 (1 Edw. 7, c. 24), came into operation on May 15th, 1902, this section must be read as though the words "or in the Burgh Police (Scotland) Act, 1892," were inserted after the word "herein." See s. 6 (1), p. 1023, *post*.

The local authority of a burgh having failed to provide a supply of good water, notwithstanding repeated remonstrances on the part of the Board of Supervision, the latter presented a petition and complaint under the corresponding section (97) of the Public Health (Scotland) Act, 1867. Thereafter the local authority proceeded to execute the necessary works:—*Held*, that the board were entitled to the expenses of the application (*Board of Supervision* v. *Pittenweem L. A.* (1874), Ct. of Sess. Cas., 1 Rettie, 1124), and see *Board of Supervision* v. *Montrose L. A.* (1872), Ct. of Sess. Cas., 11 Macpherson, 170.

Where "obstruction" within the meaning of the Public Health (Scotland) Act, 1867 (30 & 31 Vict. c. 101), s. 97, was made out to the satisfaction of the court, a remit was made to an engineer to prepare a scheme for procuring a sufficient and suitable supply of water, and for effecting the adequate drainage of the burgh (*Board of Supervision* v. *Lochmaben L. A.* (1893), Ct. of Sess. Cas., 20 Rettie, 434). See also *Board of Supervision* v. *Galashiels L. A.* (1874), 12 S. L. R. 111.

It was held in a case under the repealed Public Health Acts, that a local authority was not entitled to promote a scheme for the introduction of a water supply into a special water supply district the estimated cost of which exceeded their powers of assessment. The Local Government Board for Scotland presented a petition under s. 97 of the Public Health Act, 1867, against the County Council of Elgin, as the local authority for the county, praying the court to remit to a man of skill to inquire into the water supply of Hopeman district (which had been formed into a special water supply district under the Act), and thereafter to find that the local authority had refused or neglected to do what was required of them under the Act, by refusing or delaying to introduce into the district a supply of water sufficient

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and suitable for the domestic use of the inhabitants, and that their refusal or delay was an obstruction in the execution of the Act; and, further, to ordain the respondents to execute the work necessary to provide such a supply. The petitioners averred that the present supply of water for Hopeman was inadequate and dangerous to public health; that the respondents had delayed for a long period to deal with the matter, and had no present intention of doing so, and that this failure was a refusal or neglect to do what was required of them, and an obstruction in the execution of the Act. The petitioners did not set forth any scheme by which the respondents might have provided a water supply, but they relied on s. 89 of the Public Health Act, 1867, as authorising them to borrow any sum required for the purpose on the security of the special water assessments, and of the general assessments. The respondents lodged answers, in which they stated that they had obtained the report of an engineer as to the cost of introducing a supply of water by gravitation, but it showed that the cost would greatly exceed any sum which could be raised within the special water district by the maximum assessment of 2*s.* 6*d.*, and that, knowing this, they were not entitled to borrow a larger sum for the benefit of the special water district on the security of the general assessments payable by the whole county. They further stated that they were taking steps to improve the existing sources of supply. The petitioners moved for a remit before answer. The court refused the petition on the ground that it did not set forth any scheme for providing any improved supply of water which the respondents could have adopted within the 2*s.* 6*d.* limit, and that the petition was to be regarded as brought for the purpose of compelling the local authority to bring a supply of water by gravitation for the benefit of the special district at the cost of the whole county, *Tolmie* v. *Parochial Board of Urray* (1890), 17 Rettie, 1027, *ante*, p. 1012, distinguished (*L. G. B. for Scotland* v. *Elgin C. C.* (1897), Ct. of Sess. Cas., 24 Rettie, 512).

Exemption from stamp duties.

168. All bonds, assignations, conveyances, instruments, agreements, receipts, or other writings made or granted by or to or in favour of the local authority under this Act shall be exempt from all stamp duties.

A private Act passed in 1892 abolished a special water supply district, placed the administration of the water supply under the district committee of the county council, and provided that the county council should have power, on the requisition of the district committee, to levy assessments and to borrow money for the purposes of the Act, which assessments "shall be deemed to be . . . . the assessments . . . . authorised by the Public Health (Scotland) Act, 1867":—*Held*, that bonds granted by the county council for money borrowed for the purposes of the Act fell within the exemption from stamp duty enacted by s. 120 of the Public Health (Scotland) Act, 1867, of all bonds and other writings granted by or to a local authority under the Act (*County Council of Lanarkshire* v. *Inland Revenue* (1895), Ct. of Sess. Cas., 22 Rettie, 615).

181. [*Byelaws as to regulation of buildings.*]

183—188. [*Provisions as to byelaws.*]

PART XII.

SAVING CLAUSES AND REPEALS.

Saving Clauses.

Act not to affect navigation of rivers or canals, or

189. Nothing in this Act contained shall prejudice or affect, or shall enable any local authority or other person to injuriously affect—

(1.) The irrigation of lands in a rural district, or the supply of water used for such irrigation;

irrigation of lands.

(2.) Any supply of water which has been conducted to and is being used for any house or building used in connexion with such house or occupied for agricultural purposes;

(3.) The supply of water required for the purposes of any waterworks established by or under the provisions of any Act of Parliament, or of the compensation water required to be given by the owners of such waterworks, unless the local authority shall have previously obtained the consent of such owners;

(4.) The navigation on or use of any river, canal, dock, harbour, lock, reservoir, or basin, in respect of which any persons are by virtue of any Act of Parliament entitled to take tolls or dues, or the supply of water to the same, or any bridges crossing the same, or any towing-path thereon;

(5.) The purification of any river or stream in respect of which any persons are by virtue of any Act of Parliament authorised to exercise jurisdiction, or the rights, powers, jurisdictions, and authorities conferred by such Act.

Provided always, that it shall not be lawful for the local authority to execute any works in, through, or under any wharves, quays, docks, harbours, locks, reservoirs, or basins without the consent in writing in every case of the persons entitled by virtue of any Act of Parliament to take tolls or dues in respect thereof, and such persons may at their own expense, and on substituting other sewers, drains, culverts, and pipes equally effectual, and certified as such by the inspector to the local authority, take up, divert, or alter the level of any sewers and drains, culverts or pipes, constructed by any local authority, and passing under or interfering with such rivers, canals, docks, harbours, reservoirs, or basins, or the towing-paths thereof, and do all such matters and things as may be necessary for carrying into effect such taking up, diversion, or alteration.

Reference to Public Health Acts

193. Where, in any public general, or local Act the Public Health Acts or any sections thereof are referred to, such reference shall be deemed to mean and include a reference to this Act or the corresponding sections of this Act and any amendments thereof; and the expression "public health rate" in any such Act shall mean, and a reference to any of the assessments mentioned in section ninety-five of the Public Health (Scotland) Act, 1867, shall be deemed to be a reference to, the public health general assessment under this Act.

BURGH SEWERAGE, DRAINAGE, AND WATER SUPPLY (SCOTLAND) ACT, 1901.*

(1 EDW. 7, C. 24.)

An Act to amend the Law in regard to the Sewerage and Drainage and Water Supply of Burghs in Scotland. [17th August, 1901.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

PART I.

Security for sums borrowed for sewers, etc.
55 & 56 Vict. c. 55.
63 & 64 Vict. c. 49.

1. Where sums of money have been borrowed or are owing by the town council or commissioners of a burgh under any Act for purposes of sewerage and drainage or water supply, the town council as the authority under the Burgh Police (Scotland) Act, 1892 (herein-after referred to as the principal Act), as amended by the Town Councils (Scotland) Act, 1900, shall provide the sums necessary for repaying the principal and paying the interest of such sums out of the assessment herein-after mentioned, and the said sums shall constitute a charge on the said assessments, and the creditors shall have all the powers, rights, and remedies at the passing of this Act, exerciseable by a lender of money on the security of the assessments originally assigned to them, and the said assessments herein-after mentioned shall be deemed to be assigned to such creditors in security of their debt.

See ss. 45—49 of the Burgh Police (Scotland) Act, 1903, *post*, p. 1024.

Sewer and water assessments.

2. In any burgh, or in any special or separate drainage district formed therein under any Act, the expense incurred either before or after the passing of this Act for sewerage and drainage or water supply, as the case may be, within the same, or for the purposes thereof, and the sums necessary for repayment of any money borrowed therefor either before or after the passing of this Act, together with the interest thereof, shall be paid out of a sewer assessment or water assessment, as the case may be, which the town council of the burgh shall raise and levy on and within such burgh or (in the case of the sewer assessment) within such special or separate district, in the same manner, and with the same remedies and modes of recovery and incidents, as are provided for the public health general assessment therein.

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* By s. 3 of the Burgh Police (Scotland) Act, 1903, that Act and the Burgh Police (Scotland) Acts of 1892 and 1893 and this Act are to be read as one Act. See ss. 45—49 of the Act of 1903 as to rating, borrowing powers, and sinking fund.

Sect. 2.

Provided that where a special or separate drainage district has been formed under the provisions of any Act, and drainage works have been executed and are maintained therein, the lands and heritages situated within such special or separate district shall not be liable to assessment for the expense of sewerage and drainage works in other parts of the burgh: Provided also that for shops the water assessment shall be chargeable only on one-fourth of the rental of the premises, unless in special circumstances the town council see cause to charge the ordinary rates, and in that case it shall be lawful for any person who may think himself aggrieved to apply to the sheriff in the manner provided in the principal Act.

The sewer assessment and the water assessment together shall not in any burgh or special or separate drainage district exceed the rate of four shillings in the pound: Provided that if the produce of a rate of four shillings in the pound in any burgh or special or separate drainage district shall not be sufficient to meet the expenditure (including the annual charge for interest and repayment of debt) bonâ fide incurred or contemplated within such burgh or special or separate district, it shall be lawful to increase such rate to such extent as may have been approved of by the Local Government Board for Scotland.

Provided also, that it shall not be lawful to impose any rate in respect of the expenditure within any special or separate drainage district upon any premises without such district.

See ss. 45—49 of the Burgh Police (Scotland) Act, 1903, *post*, p. 1024.

Transference of special districts.

3. All special or separate drainage districts that may have been formed in any burgh under any Public Health Act shall, subject to the provisions of this Act, be deemed to be drainage districts under the principal Act, and any special or separate water supply districts which have been so formed shall cease to exist as such and shall be united to the other parts of the burgh for the purposes of water supply, and all rights and liabilities connected therewith: Provided that nothing herein contained shall affect any special water supply district partly within a county and partly within a burgh, or the provisions relating thereto of section eighty-one of the Local Government (Scotland) Act, 1889, as amended by section forty-four of the Local Government (Scotland) Act, 1894.

52 & 53 Vict. c. 50.

56 & 57 Vict. c. 73.

See *ante*, p. 990.

Amendment of 55 & 56 Vict. c. 55.

4.—(1.) Section two hundred and thirty-three and section two hundred and thirty-six of the principal Act shall be read as if the sewer assessment herein-before mentioned were substituted for the sewer rates therein mentioned.

(2.) Section two hundred and sixty-four of the principal Act shall be read as though for the words "portion of the burgh general assessment

Sect. 4. applicable to the water supply" the words "water assessment" were substituted.

See *ante*, p. 997.

(3.) Section three hundred and forty-seven of the principal Act shall be read as though for the words "burgh general assessment so far as it is applicable to water" the words "water assessment" were substituted.

See *ante*, p. 1001.

(4.) Section three hundred and sixty-three of the principal Act shall be read and have effect as if for the words "said assessments" the words "sewer assessments" were substituted.

(5.) Notwithstanding anything contained in section two hundred and sixty-nine of the principal Act, the provisions of that Act with respect to supply of water shall apply in the case of any burgh which is supplied with water by the town council thereof under the powers of any local Act or Acts.

See *ante*, p. 999.

Town council, etc. to have powers of 60 & 61 Vict. c. 38.

5. The powers and duties of the town council of any burgh, as the authority under the principal Act, with reference to sewerage and drainage or water supply shall extend to the whole area of the burgh as existing for the purposes of the Public Health (Scotland) Act, 1897, and the town council of any burgh, as the authority under the principal Act, in addition to the powers conferred upon them by the principal Act, or any other Act, shall, with reference to sewerage and drainage or water supply within such area, have the same rights, powers, and privileges as are conferred by the Public Health (Scotland) Act, 1897, upon local authorities under that Act in districts other than burghs, with the exception of the rights, powers, and privileges conferred by sections one hundred and twenty-two and one hundred and thirty-one of the last-mentioned Act, to which sections the present section shall not apply, and in so far as necessary for giving effect to this enactment the last-mentioned Act and the Acts and parts of Acts incorporated therewith are, subject to the necessary modifications, incorporated with the principal Act.

Provided that all costs and charges incurred by the town council in the exercise of such rights, powers and privileges shall be provided for out of the sewer assessment or water assessment before mentioned, as the case may be, and that where it shall be necessary for the town council to borrow money for the purposes of sewerage and drainage or water supply they shall be entitled to do so on the security of the sewer assessment or water assessment herein-before mentioned, in lieu of the assessments mentioned in the principal Act, or the Public Health (Scotland) Act, 1897, as the case may be.

Sect. 5.

NOTE.

In *Lanarkshire District Committee* v. *Magistrates of Ruthinglen* (1902), 39 S. L. R. 857, it was decided, in the case of a royal burgh, that the area of the burgh for the purposes of the Public Health Act was confined to the area fixed for the purposes of the Burgh Police Acts.

PART II.

Amendment of 60 & 61 Vict. c. 8.

6.—(1.) Section one hundred and forty-seven of the Public Health (Scotland) Act, 1897, shall be read as though the words "or in the Burgh Police (Scotland) Act, 1892," were inserted after the word "herein."

(2.) Section two hundred and sixty-one of the principal Act shall be read and have effect as if for the words "for other purposes" the words "for these purposes" were substituted.

Repeal.

7. The Acts specified in the schedule to this Act are hereby repealed to the extent mentioned in the third column in so far as the same apply to burghs to which this Act applies from its commencement.

Application of Act

8. The term "burgh" in this Act has the meaning assigned to it in the principal Act, but Part I. of this Act shall not apply—

(1) to any burgh to which the principal Act does not apply;

(2) to any burgh in which at the passing of this Act a local Act (including an Act confirming a Provisional Order) is in force with respect to sewerage, drainage, or water supply.

Provided that it shall be in the power of the town council of any burgh to which Part I. of this Act does not apply from its commencement by resolution to adopt Part I. of this Act, and from and after the date specified in such resolution Part I. of this Act shall come into force in the burgh, and the Acts specified in the schedule to this Act shall in so far as the same apply to such burgh be deemed to be repealed to the extent mentioned in the third column thereof and all local Acts (including as aforesaid) which apply exclusively to such burgh, so far as inconsistent with or dealing with the same matters as Part I. of this Act, shall also be repealed, which Acts or portions of Acts shall be specified in the resolution. Every such resolution shall be forthwith communicated to the Secretary for Scotland.

Commencement of Act.

9. This Act shall come into operation on the fifteenth day of May, one thousand nine hundred and two, which date is herein called the commencement of this Act.

Short title and extent.

10. This Act may be cited as the Burgh Sewerage, Drainage, and Water Supply (Scotland) Act, 1901, and shall apply to Scotland only.

Schedule.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
55 & 56 Vict. c. 55 -	Burgh Police (Scotland) Act, 1892.	Section 227 from the words "and the Commissioners" to end of section. Section 232. Section 340 from "a rate equal to four shillings" to "otherwise at." * Section 347 the words "in terms of this Act." * Section 361. Section 362. Section 364.
60 & 61 Vict. c. 38 -	Public Health (Scotland) Act, 1897.	Sections 101, 113, 133, 134, and 137.†

BURGH POLICE (SCOTLAND) ACT, 1903.

(3 EDW. 7, C. 33.)

RATING AND BORROWING POWERS.

Fractions of a pound not to be reckoned in assessing.

45. In assessing, levying, and collecting, all rates and assessments imposed by the town council under any Act, any fractional part of a pound exceeding ten shillings shall be reckoned as one pound of rateable rent or value, and any fractional part less than ten shillings shall not be taken into account.

Extension of certain sections of Burgh Police Act.

46. Sections three hundred and forty-three to three hundred and forty-six inclusive, and three hundred and forty-eight to three hundred and fifty-seven, inclusive, and section three hundred and seventy of the principal Act shall, notwithstanding any enactment to the contrary, be applicable to all assessments levied by the town council under statutory authority.

Extension of preliminary requirements to all borrowing.

47. The provisions of section three hundred and seventy-four of the principal Act, as to estimate, notice, and disposal of any proposal to borrow, shall apply to all sums to be borrowed, whether temporarily or otherwise, by the town council of any burgh under any public general Act.

Sinking funds.

48. In providing the sinking fund applicable to the repayment of any moneys borrowed by them after the commencement of this Act under any public general Act in force at the passing of this Act, the town council may in their option either do so in the manner provided by such Act, or they may annually or semi-annually, during a period not exceeding thirty years from the date of borrowing, set apart such sum as, with the interest on any accumulations thereof, shall be sufficient to pay off the whole principal and interest of the loan within such period. In calculating the annual or semi-annual amount necessary for this purpose, the interest to be received on the accumulations of the sinking fund shall be reckoned at the rate of three per centum per annum, or at such other rate as the Secretary for Scotland may, at the date of borrowing, fix, on the application of the town council. It shall further be in the power of the town council, in the case of any loan, instead of providing a sinking fund for the repayment thereof, to agree with the lender that the annual or semi-annual sums set apart as aforesaid shall be received by him in liquidation of the principal and interest of the debt.

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* See *ante*, p. 1000.

† As to ss. 133, 134, and 137, see *ante*, p. 1011

Power to borrow temporarily.

49. For the purpose of providing temporarily for their current expenses under any public general Act between the commencement of any financial year and the date when any assessment for that year is received, or of providing temporarily for the payment of any expenses which the town council of any burgh are entitled to defray from moneys borrowed under any public general Act on the security of any assessment, it shall be lawful for the town council to borrow by way of temporary loan or overdraft from any bank or on temporary loan on deposit receipt from any person on the security of such assessment, such sums as they may from time to time resolve, and any amount so borrowed shall form a charge upon the assessment in respect of which it is borrowed, as the same may be specified in the resolution of the town council authorising such borrowing, pari passu with any bond or mortgage affecting the same, and it shall further be lawful for the town council to utilise, for providing temporarily for any such expenses, any sinking funds which they may have on hand, crediting the said sinking funds with such fair rate of interest not being less than three per centum per annum as they may resolve: Provided that—

(1) All sums so borrowed in respect of the current expenses of any financial year shall be repaid before the expiry of such year out of the assessment or assessments of such year:

(2) Every other sum borrowed under the provisions of this section shall be repaid not later than six months after the expiry of the financial year in which it is borrowed: Provided that if any such sum is repaid by means of a loan, whether on mortgage or otherwise, such loan shall be deemed to have been incurred at the date at which such sum was first temporarily borrowed, and all provisions for the repayment of such loan shall apply accordingly:

(3) In all cases the town council shall in the annual abstract of their accounts show separately the amount outstanding at the end of each year of any sums temporarily borrowed, and state the reason of the same being outstanding and the steps they intend to take for paying off the same.

PROMOTION OF, AND OPPOSITION TO BILLS IN PARLIAMENT BY LOCAL AUTHORITIES.

BOROUGH FUNDS ACTS, 1872 AND 1903.

Before dealing with the provisions of the Borough Funds Acts, it may be useful to examine the state of the law on the above subject before the passing of the Borough Funds Act, 1872.

The law before the passing of Act of 1872.

Before the passing of the Borough Funds Act, 1872, the law was that public bodies such as those embraced in this Act (1) could not lawfully expend the funds or rates under their control in promoting Bills in Parliament for the purpose of altering their constitution, extending their area, or conferring upon themselves any new powers, privileges, or immunities; but (2) they could always expend such funds or rates in opposing in Parliament Bills which involved an attack upon the corporate property, rights, privileges or immunities; and (3) where there was a "surplus" of the borough fund within the meaning of s. 92 of the Municipal Corporations Act, 1835 (see now s. 143 of the Municipal Corporations Act of 1882), available "for the public benefit of the inhabitants and improvement of the borough," they were able to expend money out of such surplus in certain limited cases where, though the corporate property, rights, privileges and immunities were not attacked, yet, nevertheless, the expenditure could be shown to be "for the public benefit of the inhabitants and improvement of the borough." The leading authorities will now be noticed under each head.

Bills to extend, enlarge, or alter powers of parliamentary corporations.

(1) Certain commissioners were authorised by Act of Parliament to construct waterworks and supply water to Southampton, and to levy rates for carrying the Act into execution. The supply of water being insufficient, they desired to obtain an Act to extend their works:—*Held*, that they were not justified in applying the moneys so raised in defraying the expenses of an application to Parliament for an Act to extend their powers, and an injunction was granted to restrain them from so doing (*Attorney-General* v. *Andrews* (1851), 2 Mac. & G. 225). Certain commissioners having, before the passing of the Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76), been empowered by a local Act to levy rates not exceeding 2*s.* in the pound in any one year for paving, lighting, watching and improving the streets of the town of Plymouth, were by the Act of 1835 relieved of the duty of watching, and were, by the effect of the same Act, prevented from levying rates of more than 1*s.* 3*d.* in the pound in any year; it was held that, although if the powers of the commissioners had been sought to be affected by a private Act, they might have applied funds raised by them under their Act in opposing such intended private Act, yet they could not apply any such funds in soliciting a new Act to obviate the consequences of the public general Act, or to extend the powers originally given to them by their local Act. An injunction was accordingly granted (*Attorney-General* v. *Eastlake* (1853), 11 Hare, 205). Where improvement commissioners had by Act of Parliament been constituted for a defined district, with powers *inter alia* to "do all acts, matters, and things for promoting the health, comfort and convenience of the inhabitants" of the district which they might deem or consider necessary, the court granted an injunction to restrain the commissioners from applying any moneys produced by rates towards the promotion of a Bill in Parliament, the object of which was to obtain an extension of their district (*Attorney-General* v. *West Hartlepool Improvement*

Commissioners (1870), L. R. 10 Eq. 152). In this case, JAMES, V.-C., remarked: "If there were an unlimited power for bodies of this kind to apply whenever they thought fit to Parliament at the expense of their constituents, there would be a great deal of that kind of professional business got up, which would be done at the expense of the ratepayers; and it is much better that persons who do seek to obtain parliamentary powers should do it at the risk of satisfying Parliament it is right, and when they satisfy Parliament it is right, Parliament always takes care to provide them with the funds for having done that which is right." A corporate body constituted for the improvement of the district under their control, by resolutions promoted a Bill for the annexation of an adjoining district to their township, and caused the corporate seal to be affixed to a resolution for that purpose. The court granted an interlocutory injunction pending the hearing of the cause to restrain them as such corporate body, from promoting the Bill and from using the corporate seal for that purpose (*Attorney-General* v. *Rathmines Improvement Commissioners* (1880), 5 L. R. Ir. 114). In *Attorney-General* v. *Lambeth Vestry* (1888), 4 T. L. R. 257, it appeared that by a local Act, passed in the year 1810, for regulating certain matters relating to the parish of Lambeth, the churchwardens and overseers were constituted a corporation. The defendants came into existence under the Metropolis Management Act, 1855. They promoted a Bill in Parliament, by which it was sought to have transferred to them the property of the churchwardens and overseers under the Act of 1810. An interlocutory injunction pending the hearing of the action was granted restraining the defendants from applying their funds to the promotion of the Bill.

Different rule in case of private companies.

The above cases, it will be observed, relate to public bodies. It is otherwise with the case of a private company, whether existing under Act of Parliament or the Companies Act, 1862. Thus, a water company incorporated by Act of Parliament, which prescribed its constitution and objects, promoted a Bill (1) to obtain the sanction of the legislature to the remodelling of its constitution, and (2) to authorise a material alteration or extension of its object and powers. A shareholder sought an injunction to restrain the company from applying, in its corporate capacity, to Parliament, and from using its corporate seal and funds for the purpose. The injunction was refused (*Ware* v. *Grand Junction Waterworks Co.* (1831), 2 Russ. & M. 470). In a later case the court refused an injunction to restrain directors of a railway company from promoting a Bill (*In re L. C. & D. Rail. Arrangement Act, Ex parte Hartridge and Allender* (1869), L. R. 5 Ch. 671).

Opposition to Bills attacking property, rights, etc., of parliamentary corporations.

(2) A Bill having been promoted for the drainage of a district and being likely to injure a neighbouring level, the commissioners of sewers for that level were held to be entitled to incur costs in opposing (*R.* v. *Commissioners, etc. of Norfolk* (1850), 15 Q. B. 549). The commissioners for maintaining the banks of the river Ouse were held to be entitled to apply part of their funds in opposing a Bill in Parliament for reclaiming certain lands from the sea and diverting the water into the Ouse; and the court held that such application of their funds was incident to their trust (*Bright* v. *North* (1847), 2 Phill. 206; *S. C., sub nom. Brighton* v. *North*, 16 L. J. Ch. 255). Where a Bill in Parliament contained powers for the construction of waterworks and the doing of acts which, if done, would interfere with the stream of a river passing through the borough of Wigan so as to prevent the efficient action of the stream in removing the sewage of the town, and thus indirectly affect the value of the rateable houses in the borough, the tolls of the market, and the other property forming the borough fund, the corporation were held entitled to apply their funds in opposing the Bill, whether they had any borough fund or not (*Attorney-General* v. *Wigan* (1854), 5 De G. M. & G. 52). Commenting on this decision, COCKBURN, C.J., observed, in *R.* v. *Sheffield*, *infra*: "On looking at the judgment, it appears that the ground on which the Vice-Chancellor refused to grant the injunction was that, inasmuch as the expenditure had been incurred for the prevention of what would have led to the creation of a nuisance, and as the corporation had within its powers of local government the duty of preventing nuisances, that might be said to be within the scope of its powers, and, therefore, a thing done in

furtherance of the government of the borough and the execution of the powers of the Act." Where a Bill in Parliament provided for the punctual payment of interest on the share capital of the undertaking for which authority was sought (Bristol port and docks), by declaring that the overseers of the parish should, when required to do so, raise as part of the poor rate money for the payment of such interest, the overseers, who with the authority of the vestry had successfully opposed the Bill, were held entitled to charge the expenses so incurred upon the poor rate (*R.* v. *White* (1885), 14 Q. B. D. 358, following the older cases of *R.* v. *Stewart* (1840), 12 A. & E. 773; *R.* v. *Inhabitants of Essex* (1792), 4 T. R. 591). So where a Bill would, if passed, have affected the revenues of Dublin, the corporation were held entitled to expend their funds in opposing (*R.* v. *Dublin Town Council* (1878), 9 L. T. (N.S.) 123). A similar decision was arrived at where the Bill would materially injure the powers of a corporation (*Bower* v. *Sligo Commissioners* (1869), 4 Ir. C. L. R. 489; *cf. R.* v. *Marris* (1857), 5 W. R. 254; *R.* v. *Kingsbridge Highway Board* (1868), 18 L. T. 554; *R.* v. *Dublin Corporation* (1878), 2 Ir. L. R. 371).

The law in Scotland.

It appears from *Perth Waterworks Commissioners* v. *McDonald* (1879), Ct. of Sess. Cas., 6 Rettie, 1050, that the law on this subject in Scotland is substantially the same as in England; and see *Wakefield* v. *Commissioners of Supply for Renfrewshire* (1879), Ct. of Sess. Cas., 6 Rettie, 259, in which it was held that the commissioners could not defray out of the "county general assessment" the expenses of an opposition to the General Roads and Bridges (Scotland) Bills, 1876 and 1877, by which the interests of their county were specially affected, on the ground that the business in connection with which the expenses were incurred was not connected with the conduct of the affairs of the county, as committed by statute to the care of the commissioners, and that it was therefore *ultra vires* of them to apply towards payment of these expenses any part of the county general assessment.

Expenditure out of "surplus."

(3) The corporation of Liverpool were held not to be entitled, out of the surplus of the borough fund, to defray the expense of criminal proceedings for libel at the instance of a member of their constabulary force, the libel having relation to his conduct as inspector of public-houses and to certain evidence which he had given in that capacity (*R.* v. *Liverpool* (1872), 41 L. J. Q. B. 175). See a similar decision, *R.* v. *Exeter Corporation* (1880), 6 Q. B. D. 135. During the progress of the Liverpool Tramways Act, 1871 (34 & 35 Vict. c. clvii.), through Parliament, the Liverpool town council authorised the town clerk to make terms for the purchase of tramways with the company promoting the Bill. Amongst other terms of arrangement he agreed that the corporation should pay the expenses of the Bill if they resolved to take the tramways according to their powers in the Bill. The council consented to these terms, and after the Act was passed resolved to take the tramways; and they afterwards resolved to pay the expenses agreed to. The surplus of the borough funds in the year of these resolutions was less than the amount of the expenses, but in the subsequent years the surplus was greater than that amount:—*Held*, upon *mandamus* to the town council to pay these expenses, that there was nothing in the Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76), to prevent the payment of this claim, and that the expenses might be paid out of the surplus of the borough fund (*R.* v. *Liverpool Corporation* (1873), 28 L. T. 500). The greater part of the borough of Sheffield was supplied with water by a waterworks company, incorporated by Act of Parliament. By this Act, the company after a certain time, on the requisition of the town council, were bound to give a constant supply of water, and they were empowered to make regulations to be observed by the consumers, subject to the approval of two justices, any person aggrieved having the right to oppose the regulations before the justices. The town council having required the company to give a constant supply, the company proposed certain regulations, which were opposed before the justices by the corporation on the ground that they imposed too onerous conditions on the consumers; and the justices modified the regulations accordingly. The company also promoted a Bill in Parliament to obtain further time for the constant supply, which the corporation opposed; and it

was ultimately withdrawn. The town council made two orders for the payment out of the borough fund of the expenses of the opposition before the justices and in Parliament respectively, which were paid, notwithstanding objection that the orders were *ultra vires*. There was no surplus from property of the corporation, and borough rates were made. On a rule for a *certiorari*, under 7 Will. 4 & 1 Vict. c. 78, s. 44, to bring up these orders for the purpose of quashing them :—*Held*, assuming the objects for which the expenses were incurred to be for the public benefit of the inhabitants of the borough, yet they were not within the terms of s. 92 of the Municipal Corporations Act (5 & 6 Will. 4, c. 76), as "expenses necessarily incurred in carrying into effect the provisions of the Act"; and they could not come within the clause which enabled the town council to apply the funds "for the public benefit of the inhabitants of the borough," as there was no surplus (*R.* v. *Sheffield Corporation* (1871), L. R. 6 Q. B. 652). The Sheffield case turned on the wording of s. 92 of the Act of 1835, which after specifying certain purposes to which the borough fund should be applied went on, "and of all other expenses not herein otherwise provided for which shall be necessarily incurred in carrying into effect the provisions of this Act; and, in case the borough fund shall be more than sufficient for the purposes aforesaid, the surplus thereof shall be applied, under direction of the council, for the public benefit of the inhabitants and improvement of the borough." In this case there was no surplus of the borough fund, and consequently the only question was whether the expenditure came within the words "expenses . . . necessarily incurred in carrying into effect the provisions of this Act." The ground of the decision is thus stated by COCKBURN, C.J.: "The opposition in Parliament to a Bill introduced by a waterworks company relating to the supply of water to the town cannot possibly, as it seems to me, be a thing necessarily incurred in carrying the Act into execution." This case it was which gave rise to the passing of the Borough Funds Act: *per* CAVE, J., in *Ward* v. *Sheffield Corporation* (1887), 19 Q. B. D., at p. 23. This Act contains a saving clause (s. 8, and see also s. 4 of the Act of 1903), and it does not take away from corporations any rights which they enjoyed before, though it gives them new rights which they did not enjoy before—as is illustrated by the Sheffield case. Thus in *Attorney-General* v. *Brecon Corporation* (1879), 10 Ch. D. 204, it appeared that the corporation of Brecon were empowered by a local Act of 1838 to erect a market-house, and to provide new market places and slaughter-houses. In 1862, the corporation having built a market-house, but having failed to provide new market places and slaughter-houses, another local Act was passed authorising a company for all these purposes, and vesting in the company the markets and fairs in the borough, the market-house, and market places, and the right to take tolls, and ("with but not without the consent of the corporation") a power to provide and maintain slaughter-houses. The corporation having refused to sanction certain slaughter-houses built by the company, the company in 1878 promoted a Bill in Parliament for extension of their powers, not only in regard to the slaughter-houses, but also in regard to the tolls, the letting or sale of the markets, and an assertion of a claim to a certain limited exemption from parochial rating. The corporation opposed the Bill, and, although it ultimately passed into law, various amendments were made upon it in the course of that opposition. The corporation, however, had failed to comply with the provisions of the Borough Funds Act. Nevertheless, they were held entitled, out of the borough funds or rates, to defray the expenses of the opposition; JESSEL, M.R., remarking after reading s. 8, "The result, therefore, is that if the municipal corporation had a power prior to the passing of this Act to oppose this Bill in Parliament, that power is certainly not, to use the words of the Act, 'taken away or diminished' by the recent statute." See further, as to expenditure out of surplus of borough fund, the decision of the House of Lords in *Newcastle-upon-Tyne Corporation* v. *Attorney-General* (*on the relation of Byker Bridge Co.*), and *Attorney-General* v. *Newcastle-upon-Tyne Corporation*, [1892] A. C. 568. An alteration in the price of gas in the district of a municipal corporation—a large consumer for public lighting and otherwise—does not affect its "rights, privileges, and duties" within the principle of the decision in *Attorney-General* v. *Brecon*

Corporation, supra. Therefore, at the instance of a gas company (suing as ratepayers), a municipal corporation—which had not complied with the requirements of s. 4 of the Borough Funds Act, 1872—was restrained from applying any part of its borough fund (there being no surplus) to the cost of opposition before Parliament to a Bill promoted by the gas company which would affect the price of gas (*Attorney-General* v. *Swansea Corporation*, [1898] 1 Ch. 602). A municipal corporation cannot, where there is no surplus of the borough fund, legally pay thereout costs incurred by the chief constable in opposing by direction of the council appeals against the refusal of justices to renew the licences of publicans. *Quære*, whether, if there were a surplus, it could legally be applied to payment of such costs (*Tynemouth Corporation* v. *Attorney-General*, [1899] A. C. 293). The municipal corporation of Leith, who were also the local authority for public health, incurred costs in opposing in Parliament a Bill for amalgamating the burghal territory of Leith and Portobello with the city of Edinburgh, and they succeeded in having the Bill thrown out as regards Leith :—*Held* (distinguishing *Attorney-General* v. *Brecon Corporation, supra*), that it was *ultra vires* of the corporation to include the expenses of the opposition in the public health assessment as expenses "incurred in executing" the Public Health (Scotland) Act, 1867 (*Leith Magistrates, etc.* v. *Leith Harbour and Docks Commissioners*, [1899] A. C. 508).

The Rickmansworth gas company (a statutory company) promoted a Bill for increased capital, and to include within their limits a neighbouring parish. The Rickmansworth U. D. C. thereupon took steps to oppose the Bill, but they had not complied with the Borough Funds Act, 1872. In an action at the instance of the Attorney-General (on the relation of the gas company), the Rickmansworth U. D. C. were restrained from so opposing as to throw the expenses on the rates until the consent of the ratepayers had been obtained (*Attorney-General* (*on the relation of the Rickmansworth Gas Co.*) v. *Rickmansworth U. D. C.* (1902), 86 L. T. 521 (see now, however, the Act of 1903)). In this case the urban district council relied on the Local Authorities (Expenses) Act, 1887 (50 & 51 Vict. c. 72), s. 3, which provides that "Expenses paid by any local authority whose accounts are subject to audit by a district auditor shall not be disallowed by that auditor if they have been sanctioned by the Local Government Board." The Board had not been applied to and had not authorised the expenditure. KEKEWICH, J., granted an injunction. This injunction was not to prevent the council from opposing the Bill, but from so opposing it as to throw the expenses on the rates until the consent of the ratepayers had been obtained.

Analogous provisions of Towns Improvement Act, 1847.

The Towns Improvement Act, 1847, contained provisions (ss. 132, 133, and 134) analogous to those in the Borough Funds Act, but its operation was very limited, because by the first section it was enacted that, "This Act shall extend only to such towns or districts in England or Ireland as shall be comprised in any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith." Certain portions of the Act are incorporated with the Public Health Act, 1875 (ss. 160 and 169), but not ss. 132, 133, and 134.

In the Kingstown Township Bill, 1873, while the case for the promoters was proceeding, it was made known that the town commissioners of Kingstown, by whom the Bill was promoted, had been restrained by injunction from proceeding further with the Bill, on the ground that they had failed to comply with the requirements of the Towns Improvement Act, 1847 (ss. 132, 133, and 142), and were not therefore entitled to come to Parliament. The commissioners, however, had also signed the petition for the Bill as individuals; and claimed to proceed with the Bill in that capacity, but the committee resolved, 'That the counsel for the promoters having stated that the commissioners had withdrawn from the promotion of the Bill, the committee decided that they ought not to proceed further with the Bill, and that they would report to the House that the preamble had not been proved.' This decision was founded, it is believed, upon the determination of the committee not to favour any evasion of the Towns Improvement Act, and of the injunction founded upon it. Attempts were afterwards made without success to obtain a rehearing, but the committee adhered to their determination" (May's Parl. Practice, 10th ed., 779).

The following Standing Orders of the House of Commons bear on the *locus standi* of county councils and municipal and other local authorities :—

Municipal authorities and inhabitants of towns.

134. It shall be competent to the referees on private Bills to admit the petitioners, being the municipal or other authority having the local management of the metropolis, or of any town, or the inhabitants of any town or district alleged to be injuriously affected by a Bill, to be heard against such Bill, if they shall think fit.*

Local authorities to have a *locus standi* against lighting and water Bills.

134A. The municipal or other local authority of any town or district alleging in their petition that such town or district may be injuriously affected by the provisions of any Bill relating to the lighting or water supply thereof, or the raising of capital for any such purpose shall be entitled to be heard against such Bill.*

County council alleged to be injuriously affected by Bill.

134B. It shall be competent to the referees on private Bills to admit the petitioners, being the council of any administrative county or county borough, or being a joint committee of councils of administrative counties or county boroughs, the whole or any part of which is alleged to be injuriously affected by a Bill, to be heard against such Bill if they think fit.

County council to have a *locus standi* against a water Bill.

134C. The council of any administrative county alleging in their petition that such administrative county, or any part thereof, may be injuriously affected by the provisions of any Bill relating to the water supply of any town or district, whether situate within or without such county . . . shall be entitled to be heard against such Bill.

By Standing Order No. 134D, which was passed in 1902, it was further provided that:

Where any owner, lessee or occupier, or when any conservancy or other authority charged with the control of river or other waters, petitions against a Bill alleging that under its provisions any water or water supply of which they may legally avail themselves will be diminished or injuriously affected, it shall be competent to the referees on private Bills, if they think fit, to admit the petitioners to be heard against the Bill or any part thereof.

This standing order was passed with reference to Bills seeking power to abstract underground water.

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*It has been held that this standing order does not apply to the case of a parish council (see May's Parliamentary Practice, pp. 776, n., 777, n.).

BOROUGH FUNDS ACT, 1872.*

(35 & 36 VICT. c. 91.)

An Act to authorise the application of Funds of Municipal Corporations and other Governing Bodies in certain cases.

[10th August, 1872.]

Preamble repealed by Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54).

Interpretation of terms.

1. The term "governing body" in this Act shall mean the council of any municipal borough, the board of health, local board, commissioners, trustees, or other body acting under any general or local Act of Parliament for the management, improvement, cleansing, paving, lighting, and otherwise governing places or districts, and the term "district" shall mean the borough, place, township, or district within which the governing body may for the time being have jurisdiction: Provided, however, that in the borough of Cambridge, in any matters affecting the constitution, power, or functions of the Board of Cambridge Improvement Commissioners, as defined in the several Acts of Parliament relating thereto, the term "governing body" shall mean such board of improvement commissioners, and not the council of the borough of Cambridge.

A rural district council has not been considered to be within this section. The point was raised but not decided in *Cleverton* v. *St. Germain's Union Sanitary Authority* (1887), 56 L. J. Q. B. 83.

County councils in England and Wales.

The Borough Funds Act was made applicable to county councils in England and Wales by s. 15 of the Local Government Act, 1888 (51 & 52 Vict. c. 41), which provided as follows:

> The county council of an administrative county shall have the same powers of opposing Bills in Parliament, and of prosecuting or defending any legal proceedings necessary for the promotion or protection of the interests of the inhabitants of the county, as are conferred on the council of a municipal borough by the Act of the thirty-fifth and thirty-sixth years of Victoria, chapter ninety-one; and subject as hereinafter provided the provisions of that Act shall extend to a county council as if such council were included in the expression "governing body," and the administrative county were the district in the said Act mentioned.
>
> Provided that—
>
> (a.) No consent of owners or ratepayers shall be required for any proceedings under this section;
>
> (b.) This section shall not empower a county council to promote any Bill in Parliament, or to incur or charge any expense in relation thereto.

By the County Councils (Bills in Parliament) Act, 1903 (3 Edw. 7, c. 9), the above sub-s. (b) was repealed, and it was enacted as follows:

Power to county councils to promote Bills in Parliament.

> (1) The powers conferred by section fifteen of the Local Government Act, 1888, on the council of a county to oppose Bills in Parliament shall be extended so as to authorise them to promote Bills as well as to oppose them.

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* The name of this Act has been shortened as above by the Short Titles Act, 1896 (59 & 60 Vict. c. 14).

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(2) The county council may determine that any expenses incurred in pursuance of section fifteen of the Local Government Act, 1888, as amended by this Act, are to be regarded as incurred for special county purposes, but any such determination shall be forthwith notified to the overseers of any parish liable to be assessed in pursuance of such determination and shall be subject to appeal within twenty-one days at the instance of the overseers of any parish so liable to the Local Government Board, whose decision shall be final.

51 & 52 Vict. c. 41.

(3) For the purpose of deciding any such appeal sub-sections (1) and (5) of section eighty-seven of the Local Government Act, 1888 (which relates to local inquiries), shall apply.

(4) The powers conferred by this section shall be in addition to and not in derogation of any powers possessed by the London County Council.

See further the note under s. 2 of the Borough Funds Act, 1872, *post*, p. 1035.

London County Council's further powers.

In addition to the foregoing, the London County Council, as the successors of the Metropolitan Board of Works, possess power to promote Bills under s. 144 of the Metropolis Management Act, 1855, and s. 10 of the Metropolis Management Act, 1856. They also possess special powers with regard to water supply under the London Water Act, 1892, s. 2 whereof provides as follows:

> The London County Council shall have power from time to time to pay the costs and expenses of promoting Bills in Parliament relating to the supply of water in the administrative county of London and within the limits of supply of the metropolitan water companies:
>
> "The metropolitan water companies" mean and include the several companies mentioned in the schedule to this Act.

Councils of metropolitan boroughs.

It is provided by the London Government Act, 1899 (62 & 63 Vict. c. 14), s. 6 (6)—

> A borough council shall have the same powers of promoting and opposing Bills in Parliament, and of prosecuting or defending any legal proceedings necessary for the promotion or protection of the interests of the inhabitants of their borough, as are conferred on borough councils outside London by the Borough Funds Act, 1872, and the provisions of that Act shall extend to the council of a metropolitan borough as if that council were included in the expression "governing body" and the borough were a district in that Act mentioned.

Metropolitan Water Board.

By the Metropolitan Water Act, 1902 (2 Edw. 7, c. 41), s. 24 (1) (c), the Metropolitan Water Board are given powers "to promote or oppose any Bill in Parliament and prosecute or defend legal proceedings."

County councils in Scotland.

By s. 56 of the Local Government (Scotland) Act, 1889 (52 & 53 Vict. c. 50), it was provided that—

> The council of a county shall have the same powers of opposing Bills in Parliament, and of prosecuting or defending any legal proceedings necessary for the promotion or protection of the interests of the county, as are conferred by the Act of the thirty-fifth and thirty-sixth years of her present Majesty, chapter ninety-one; and, subject as hereinafter provided, the provisions of that Act shall extend to a county council as if such council were included in the expression "governing body," and the county were the district in the said Act mentioned.
>
> Provided that—
>
> (a.) No consent of owners and ratepayers shall be required for any proceedings under this section;

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(b.) This section shall not empower a county council to promote any Bill in Parliament, or to incur or charge any expense in relation thereto, save only a Bill for confirming a provisional order made under or in pursuance of the provisions of any Act of Parliament:

(c.) The consent of the Secretary for Scotland shall be substituted for the consent of the Secretary of State or Local Government Board.

By the Private Legislature Procedure (Scotland) Act, 1899, the necessity for private Bills was to a large extent superseded. Under that Act parties are enabled to obtain Parliamentary powers in regard to almost all matters "affecting public or private interests in Scotland for which they are entitled to apply" by means of a private Bill, by means of orders granted by the Secretary of Scotland which are subsequently confirmed by Parliament in a Bill. By s. 11 of the Act it is provided as follows:

Powers of county councils, town councils, etc., under Act.

> (1) County councils shall have the same powers and be subject to the same restrictions in regard to proceedings under, or in pursuance of this Act, as they now have or are subject to under the provisions of section fifty-six of the Local Government (Scotland) Act, 1889, in regard to Private Bills or Confirmation Bills.
>
> (2) Town councils and burgh commissioners shall have the same powers and be subject to the same restrictions in regard to proceedings under or in pursuance of this Act as they now have or are subject to in regard to Private Bills or Confirmation Bills.
>
> (3) In addition, any county council, or town council, or burgh commissioners connected with the locality to which any draft provisional order referred to commissioners under this Act relates, may make a report to the commissioners respecting the provisions of the draft order, and the commissioners shall consider the recommendations contained in the report.

By s. 2 of the County Councils (Bills in Parliament) Act, 1903 (3 Edw. 7, c. 9), it is provided as follows:

> Notwithstanding any provision to the contrary therein contained, the powers conferred on the council of a county in Scotland by section fifty-six of the Local Government (Scotland) Act, 1889, as read with sub-section (1) of section eleven of the Private Legislation Procedure (Scotland) Act, 1899, shall be extended so as to authorise such council to promote Provisional Orders or Bills under or in pursuance of the last-mentioned Act as well as to oppose them.

Application of the Borough Funds Act to Scotland.

Although the Borough Funds Act, 1872, did not provide that the Act should not extend or apply to Scotland, it has been doubted whether the Act has any operation in Scotland owing to the fact that the machinery of the Act is peculiarly English. In *Perth Waterworks Commissioners* v. *McDonald* (1879), Ct. of Sess. Cas., 6 Rettie, 1050, the Lord Justice Clerk (Lord MONCRIEFF) observed: "I incline to the opinion that the statute applies to Scotland, because its object is general, and there are no words to exclude and no reason for excluding Scotland from its operation, although I see great difficulties in the way of its practical application." Lord ORMIDALE doubted whether the Act applied, and Lord GIFFORD was of opinion that it did. It was not necessary, however, to decide the point, as judgment went on another ground. In the case of *Leith Harbour Commissioners* v. *Leith Magistrates, etc.* (1897), Ct. of Sess. Cas., 25 Rettie, 126, the question was again considered whether the Borough Funds Act, 1872, applied to Scotland. Lord PEARSON, Ordinary, said that the Act had never been, so far as known, acted upon in Scotland. After a careful examination of the arguments, he concluded thus: ". . . It seems to me that the fact that Ireland is expressly excluded affords an argument of some weight to show that Scotland is within the Act. A leaning in favour of this view was indicated by the judges in the case of the *Perth Water Commissioners*, and on the whole I am disposed to adopt it" (p. 133). In the Inner House, the Lord Justice

Clerk having delivered his judgment against the magistrates on other grounds, observed: "Taking this view of the case, it is unnecessary to enter upon the question whether the Borough Funds Act of 1872 applies to Scotland. If it were necessary to decide that question, I should be inclined to hold that it does so apply. I am unable to see that by any necessary implication Scotland is excluded, while Ireland is excluded in express terms. The fact that sufficient care may not have been taken to make the procedure conform to Scots law and practice is not of itself sufficient to prevent the application of an Act to Scotland. But, as I have said, a definite decision upon that matter is unnecessary." This case was taken by appeal to the House of Lords. The question of the application of the Borough Funds Act to Scotland was mentioned in the course of the argument, but was not pressed, and no reference was made to it in the judgments ([1899] A. C. 508). The argument for the application of the Act was not pressed because, "as the newspaper reports and the testimony of those engaged in the case prove, the Court expressed themselves in the strongest possible manner against its application." See *Juridical Review*, January, 1902.

By s. 55 of the Burgh Police (Scotland) Act, 1903 (3 Edw. 7, c. 33), it is provided that—

> Without prejudice to any powers possessed by them under the existing law the town council of a burgh shall, subject to the like conditions, have the like powers of opposing Bills or Provisional Orders as are conferred upon county councils by section fifty-six of the Local Government (Scotland) Act, 1889, as read with the Private Legislation Procedure (Scotland) Act, 1889, and any expenses incurred by them in any year in the exercise of the last-mentioned powers may be defrayed in whole or in part from any assessment or from any two or more separate assessments levied by them in such year or in the following year, all as the town council may determine: Provided that any ratepayer who is entitled to an exemption from any assessment leviable by the town council, may appeal to the Secretary for Scotland against any such determination, and his decision shall be final. Provided further—
>
> (1) That any such appeal shall be made within fourteen days from the publication or advertisement, in manner provided by section three hundred and forty of the principal Act or otherwise of the assessment appealed against; and
>
> (2) That in the event of any such appeal being sustained in whole or in part, and any such assessment being quashed or varied, it shall be competent to the town council notwithstanding anything in the principal Act contained, to forthwith rectify and readjust, in accordance with the decision of the Secretary of Scotland, the assessment so quashed or varied.

As to Ireland, see *post*, p. 1055.

Ireland.

Costs of promoting or opposing parliamentary and other proceedings for benefit of inhabitants to be charged on borough and local funds, except in certain cases.

2. When in the judgment of a governing body in any district it is expedient for such governing body to promote or oppose any local and personal Bill or Bills in Parliament, or to prosecute or defend any legal proceedings necessary for the promotion or protection of the interests of the inhabitants of the district, it shall be lawful for such governing body to apply the borough fund, borough rate, or other the public funds or rates under the control of such governing body to the payment of the costs and expenses attending the same; and when there are several funds or rates under the control of the governing body, such governing body shall determine out of which fund or funds, rate or rates, such expense shall be payable, and in what proportions: Provided that nothing in this Act contained shall authorise any governing body to promote any

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Bill in Parliament for the establishment of any gas or water works to compete with any existing gas or water company established under any Act of Parliament: Provided that no powers contained in this clause shall apply in any case where the promotion of or opposition to a Bill by a governing body has been decided by a committee of either House of Parliament to be unreasonable or vexatious.

Provisional Orders under Railway and Canal Traffic Act, 1891.

By the Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), the Board of Trade were authorised to make provisional orders (s. 24), and it was provided that if any petition should be presented against the confirming Bill, the petitioners should be allowed to appear and oppose as in the case of a private Bill. By s. 1 of the Railway and Canal Traffic (Provisional Orders) Amendment Act, 1891 (54 Vict. c. 12), "Every governing body within the meaning of the Borough Funds Act or the Borough Funds (Ireland) Act, 1888, and every county council shall be entitled to be a petitioner and to appear and oppose any Bill to confirm any provisional order under s. 24 of the Railway and Canal Traffic Act, 1888," as if the Bill for confirming such provisional order were a local and personal Bill within the meaning of s. 2 of the Borough Funds Act, and of s. 3 of the Borough Funds (Ireland) Act, 1888, and it was enacted that the provisions of the said last-mentioned Acts respectively shall apply to any such appearance or opposition and to any expense incurred or to be incurred in relation thereto, provided that in the case of a county council no consent of owners and ratepayers shall be required. By the Borough Funds Act, 1903, s. 7, sub-s. (2), it is provided that references in the Railway and Canal Traffic (Provisional Orders) Amendment Act, 1891, to the Borough Funds Act, shall be construed and have effect as references to the Borough Funds Act, 1872, as amended by that Act.

Otherwise than as above, provisional orders are not local or personal Bills within the meaning of s. 2, *supra*, and therefore the provisions of this Act do not apply. See *ante*, p. 900.

No payment to member of governing body to be so charged.

3. No payment to any member of a governing body for acting as counsel or agent in promoting or opposing any such Bill shall be charged as aforesaid.

Costs of promoting or opposing Bills to require sanction of special meetings.

4. No expense in relation to promoting or opposing any Bill or Bills in Parliament shall be charged as aforesaid unless incurred in pursuance of a resolution of an absolute majority of the whole number of the governing body at a meeting of the governing body, after ten clear days notice by public advertisement of such meeting and of the purpose thereof in some local newspaper published or circulating in the district, such notice to be in addition to the ordinary notices required for summoning such meeting, nor unless such resolution shall have been published twice in some newspaper or newspapers circulating in the district, and shall have received, in respect of matters within the jurisdiction of the Local Government Board, the approval of such Board, and in respect of other matters the approval of one of Her Majesty's Secretaries of State,* and in case of the promotion of a Bill in Parliament no further expense shall be incurred or charged as aforesaid after the deposit of the Bill, unless the propriety of such promotion shall be confirmed by such absolute majority at a further special meeting to be held in pursuance of a

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* The new Act transfers to the Local Government Board the powers conferred upon the Secretary of State by the Act of 1872 or by virtue of any extension or application of that Act. The approval of the Local Government Board, therefore, must now be obtained in every case to any resolution under s. 4 of the Act of 1872.

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similar notice not less than fourteen days after the deposit of the Bill in Parliament : *Provided further, that no expense in promoting or opposing any Bill in Parliament shall be charged as aforesaid unless such promotion or opposition shall have had the consent of the owners and ratepayers of that district, to be expressed by resolution in the manner provided in the Local Government Act,* 1858, *for the adoption of that Act.*

The Borough Funds Act, 1903 (3 Edw. 7, c. 14), repealed the last proviso to this section. The provisions regarding adoption in the proviso were superseded by the rules as to resolutions of owners and ratepayers contained in Schedule C. of the Public Health Act, 1875; see s. 313 of that Act. For the consent of the "owners and ratepayers," the Act of 1903 provides for a public meeting of electors (as defined, see p. 1041), and for a resolution in favour of promotion being put and voted upon for or against. It was part of the rules of the Act of 1875 that, at a meeting of owners and ratepayers, a poll might be demanded by any one individual, and there was no provision for the demand of a poll by the governing body in case the decision of the meeting was against them. By the Borough Funds Act, 1903, these rules are no longer to apply, and fresh regulations for the purpose are embodied in the schedule. These provide that within seven days after the deposit of the Bill (*a*) notice shall be given by placards and by advertisement in some local newspaper in two consecutive weeks with certain definite particulars; (*b*) a public meeting shall be held not less than fourteen days nor more than twenty-eight days after the first advertisement; (*c*) the proceedings at the meeting; (*d*) also that a poll may be required by not less than one hundred electors, or one twentieth of the electors whichever may be the less, and also provide for a poll being demanded by the governing body where the decision of the meeting is against them. See these new regulations set out *post*, p. 1042.

Besides the various provisions with regard to the poll which are contained in the first schedule to the Act of 1903, the Local Government Board are authorised to make and have made regulations and prescribed forms. See *post*, p. 1044.

Where the decision of the meeting is against proceeding with the Bill or part or parts or clause or clauses, provision is made by s. 3 for payment of the costs subject to taxation by the taxing officer of one of the Houses of Parliament.

As regards opposition to Bills in Parliament, s. 7 provides that the provision in s. 4 requiring the consent of owners and ratepayers shall cease to apply, and furthermore the proviso to s. 4 is entirely repealed. The whole of s. 4 of the Act of 1872, except the proviso, must still be complied with as regards (1) the resolution of an absolute majority of the governing body; (2) at a meeting after ten clear days' notice by public advertisement as prescribed; (3) publication twice of the resolution; (4) the approval of the Local Government Board.

The following cases decided under the earlier law are still of practical value:

At a meeting under the Borough Funds Act, 1872, a resolution to oppose a Bill in Parliament was duly passed with one dissentient, who thereupon demanded a poll, but the demand was refused. The dissentient thereupon obtained a rule for a mandamus to the mayor, to summon a further meeting on the ground that the former meeting was a nullity. The dissentient being one of the solicitors to the Bill, the Court refused the mandamus on the ground that they were not satisfied that the application was made in the interest of the owners and ratepayers (*R.* v. *Peterborough Corporation* (1875), 44 L. J. Q. B. 85).

At a meeting held in conformity with the Borough Funds Act, the resolutions were declared carried on a show of hands. A written demand for a poll was then made by a ratepayer. Another ratepayer rose to second

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NOTE.

it "if necessary"; but the town clerk said it was not necessary to do so. The first ratepayer subsequently, and after the meeting had separated, withdrew his demand. Thereupon the mayor was advised by the town clerk that the demand having been withdrawn there was no power to take a poll. The second ratepayer then applied for a mandamus. The Court held that there was no necessity for a demand for a poll being in writing; that the action of the applicant was in substance a demand of a poll by him; and further it was doubted whether the original demand for a poll could be withdrawn after the close of the meeting (*R.* v. *Dover* (*Mayor*), [1903] 1 K. B. 668).

The Dublin corporation having called a public meeting, the result of a poll taken was a majority against the promotion of a Bill by the corporation. The corporation not being satisfied with this result, resolved to call another meeting and have another poll; and they advertised this second meeting dealing with the same Bill to be introduced in the same session of Parliament. An injunction was granted. The Master of the Rolls said that he would not grant any injunction that would restrain the Lord Mayor or anybody else from holding a public meeting for any purpose, but it must not purport to be held under the Borough Funds Act (*Attorney-General on relation of Findlater* v. *Dublin Corporation*, Jl. of G. L., April 2nd, 1895, p. 705). See now the Borough Funds Act, 1903, *post*, p. 1039.

Proviso as to approval of Local Government Board, etc., to any such resolution.

5. The approval of the Local Government Board *or one of her Majesty's principal Secretaries of State, as the case may be*, shall not be given to any such resolution as aforesaid, until the expiration of seven days after the second publication thereof, as provided by this Act, and in the meantime any ratepayer within the district of the governing body may give notice in writing to the Local Government Board *or Secretary of State* objecting to such approval.

The words in italics were repealed by the Borough Funds Act, 1903 (3 Edw. 7, c. 14, s. 10). By s. 8 of that Act it is provided that:

"The powers conferred upon the Secretary of State by the Borough Funds Act, 1872, or by virtue of any extension or application of that Act, shall be transferred to and exercised by the Local Government Board."

As to Scotland, see s. 56 (c) of the Local Government (Scotland) Act, 1889, set out, *ante*, p. 1033. An application by a local authority to the Local Government Board under this enactment should be made in strict accordance with the printed instructions of the Board relative to such applications. The following sets of instructions have been issued: (As to promotion of Bills)—county councils (s. 61a); town councils (s. 62a); urban district councils (s. 63a); metropolitan borough councils (s. 82a). (As to opposition to Bills)—county councils (s. 61); town councils (s. 62); urban district councils (s. 63); metropolitan borough councils (s. 82). Copies of these instructions are supplied by the Board on request.

Costs to be examined.

6. All costs, charges, and expenses incurred under the provisions of this Act shall, before the same become chargeable, be examined and allowed by some person to be authorised *by one of her Majesty's principal Secretaries of State* or by the Local Government Board, *as the case may be.*

See note under preceding section.

Power to direct local inquiry.

7. The Local Government Board, *or one of her Majesty's principal Secretaries of State*, shall have power to direct a local inquiry to be held upon any application under this Act, by any person or persons whom they may respectively nominate for the purpose, and to charge the costs and expenses of such local inquiry upon the governing body or the person by whom such application shall be made.

See note under s. 5.

8. Nothing in this Act shall extend or be construed to alter or affect any special provision which is or shall be contained in any other Act for the payment of the costs, charges and expenses intended to be provided for by this Act, or to take away or diminish any rights or powers now possessed or enjoyed by any governing body, or which are or shall be vested in or exercisable by the inhabitants of any district under any general or special Act.

Saving clause.

See *Attorney-General* v. *Brecon Corporation*, *ante*, p. 1029, and *Brooks, Jenkins & Co.* v. *Torquay Corporation*, [1902] 1 K. B. 601, and note to s. 1 as to the powers of the London County Council.

9. [*Repealed by the Statute Law Revision Act*, 1883.]

10. The provisions of this Act shall not extend to applications for any Bill in Parliament for any object which would, for the time being, be attainable by provisional order.

Act not to extend to Bills if object attainable by provisional order.

11. This Act shall not extend or apply to Ireland or the city of London *or the metropolitan area as defined by the Metropolis Management Act*, 1855.

Act not to apply to Ireland.

The words in italics were repealed by the Borough Funds Act, 1903, s. 10 See s. 6 (6) of the London Government Act, 1899, set out, *ante*, p. 1033.

An Act similar to the foregoing has been passed for Ireland, viz., the Borough Funds (Ireland) Act, 1888 (51 & 52 Vict. c. 53). See *post*, p. 1055.

BOROUGH FUNDS ACT, 1903.

(3 EDW. 7, c. 14.)

An Act to amend the Borough Funds Act, 1872.

[11th August, 1903.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, as follows:

1. No expense in relation to the promotion of a Bill in Parliament shall be charged by the council of a borough or urban district under the Borough Funds Act, 1872, unless the requirements contained in the First Schedule to this Act have been observed.

Expense of promoting Bills. 35 & 36 Vict. c. 91.

2.—(1) If the result of a poll under this Act, or the decision of a meeting of electors when final, is against the promotion of the Bill, or of a part of parts, or clause or clauses, of the Bill, the council shall forthwith take all necessary steps to withdraw the Bill, or the part or parts, or clause or clauses (as the case may be), against which the poll has resulted or the decision of the meeting has been given.

Withdrawal of Bill, or part, in case of adverse poll.

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(2) In the case of equality of votes on any question of promotion, that question shall be deemed to be decided against the promotion.

Expenses when Bill is withdrawn.

3. Where a Bill, or a part or parts, or clause or clauses, of a Bill, is or are withdrawn, no further expense shall be incurred by the council, or mayor or chairman, in or about the promotion of the Bill, or part or parts, or clause or clauses, so withdrawn, but, subject as aforesaid, all costs, charges, and expenses incurred by the council, or mayor or chairman, in or as incidental to the preparation and promotion of the Bill up to and inclusive of its deposit in Parliament and withdrawal (if withdrawn), and in or as incidental to the holding of a meeting or the taking of a poll under this Act shall, when taxed by the taxing officer of one of the Houses of Parliament, and allowed under the Borough Funds Act, 1872, be charged on and payable out of such one or more of the public funds or rates under the control of the council (and, if more than one, then in such proportions) as the council, having regard to the nature and objects of the Bill, may determine to be just and proper.

35 & 36 Vict. c. 91.

Saving for special Acts

4. Nothing in this Act shall extend or be construed to alter or affect any special provision in any local Act for the payment of the costs, charges, and expenses in relation to the promotion by any council of a Bill in Parliament, or to take away or diminish any rights or powers now possessed or enjoyed by any council, or which are or shall be vested in or exerciseable by the inhabitants of the district of any council under any general or special Act, but the council may, if they think fit, adopt with respect to the promotion of any Bill the procedure provided by this Act in lieu of that provided by the local Act.

See s. 8 of the Act of 1872, and the note thereunder, p. 1039, *ante*.

Offences in relation to polls.

5.—(1) Any person who at, or for the purposes of, a poll under this Act—

(i.) fraudulently signs or forges any signature to a requisition of electors under this Act; or

(ii.) applies for a voting paper in the name of some other person, whether that name be the name of a person living or dead, or of a fictitious person; or

(iii.) having voted once, applies for a second voting paper in his own name; or

(iv.) forges or counterfeits, or fraudulently defaces or fraudulently destroys any voting paper; or

(v.) without due authority supplies a voting paper to any person; or

(vi.) fraudulently puts into any box or other receptacle any paper other than a voting paper supplied to him for the purpose; or

(vii.) fraudulently takes out of the polling station any voting paper; or

(viii.) without due authority destroys, takes, opens, or otherwise interferes with any box or other receptacle for voting papers or any voting papers then in use; or (ix.) causes any disturbance or disorder in or near any polling station; shall be liable on summary conviction to a fine not exceeding twenty pounds.

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(2) An attempt to commit any offence specified in this section shall be punishable in the manner in which the offence is punishable.

Non-compliance with procedure.

6. The failure to comply with the requirements of this Act as to notices or the time within which anything is to be done, or the procedure at a meeting of electors or the mode of taking a poll, shall not render invalid the charge under the Borough Funds Act, 1872, or this Act of any expenses in relation to the promotion of a Bill, if the provisions of this Act have been substantially complied with and the failure has not affected the result of the proceedings under this Act.

Expenses of opposing Bills.

7.—(1) The provision contained in section four of the Borough Funds Act, 1872, that no expense in opposing a Bill in Parliament shall be charged unless the opposition has had the consent of the owners and ratepayers of the district, shall cease to apply.

54 Vict. c. 12.

(2) In section one of the Railway and Canal Traffic (Provisional Orders) Amendment Act, 1891, references to the Borough Funds Act shall be construed and have effect as references to the Borough Funds Act, 1872, as amended by this Act.

As to sub-s. (2) see *ante*, p. 1036.

Transfer to Local Government Board of certain powers of Secretary of State.

8. The powers conferred upon the Secretary of State by the Borough Funds Act, 1872, or by virtue of any extension or application of that Act, shall be transferred to and exercised by the Local Government Board.

Definitions.

9. For the purposes of this Act, the expression "council" includes the council of every borough and of every urban district, the expression "borough" includes a metropolitan borough, and the expression "electors" means the parochial electors for the time being enrolled in the register of parochial electors in force for the parishes in a borough or urban district, and the expression "the mayor or chairman" means the mayor of the borough or the chairman of the urban district council.

Repeals.

10. The enactments specified in the Second Schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule.

Extent of Act.

11. This Act shall not extend to Scotland or Ireland.

Short title and commencement.

12.—(1) This Act may be cited as the Borough Funds Act, 1903, and the Borough Funds Act, 1872, and this Act may be cited together as the Borough Funds Acts, 1872 and 1903.

(2) This Act shall come into operation on the first day of October nineteen hundred and three.

Sched. 1.

SCHEDULES.

FIRST SCHEDULE.

REGULATIONS FOR MEETING AND POLLING OF ELECTORS.

35 & 36 Vict. c. 91.

(1) Where the council of a borough or urban district have resolved, in accordance with the provisions of the Borough Funds Act, 1872, to promote a Bill in Parliament, and the Bill has been deposited, notice shall be given by placards and by advertisement in some local newspaper circulating in the borough or district in two successive weeks stating—

(*a*) the title of the Bill; and

(*b*) a brief statement of the objects of the Bill;

(*c*) that the Bill has been deposited, and the date on which it was first deposited in either house; and

(*d*) that copies of the Bill may be inspected and purchased at a place within the borough or district specified in the notice, between the hours of ten in the forenoon and five in the afternoon, on every week day for fourteen days after the date of the first advertisement, and that extracts may be taken free of charge; and

(*e*) That a public meeting of electors will be held on a day named, not being less than fourteen nor more than twenty-eight days after the first advertisement of the notice, for the purpose of considering the question of the promotion of the Bill, and indicating the resolutions which will be submitted to the meeting.

(2) The first advertisement under these regulations must be made within seven days from the first deposit of the Bill in either House, and the placards giving notice under these regulations must be posted within the same time.

(3) A public meeting of electors shall be held in accordance with the notice, and the mayor or chairman, or, in the event of his being unable or unwilling to preside, any person appointed by the council to perform that duty, shall be president of the meeting; but, if neither the mayor or chairman, nor the person so appointed, is present within ten minutes after the time appointed for the meeting, the meeting shall choose an elector present at the meeting to be president of the meeting.

(4) The president of the meeting may, with the consent of the majority of the electors present, adjourn the meeting for not more than seven days.

(5) On opening any such meeting the president of the meeting, or a member or officer of the council, shall give such explanation of the Bill with reference to which the meeting is held as he thinks expedient.

(6)—(*a*) The question of the promotion of the Bill shall be put by the president to the meeting either by a single resolution in favour of the promotion of the whole Bill, or by separate resolutions in favour of the promotion of any part or parts or clause or clauses of the Bill, but together covering the promotion of the whole Bill, and the meeting shall decide for or against any such resolution.

(*b*) The president shall explain to the meeting the resolution or resolutions he proposes to put to the meeting, and the question of the promotion of the Bill shall be put in the manner proposed;

Provided that, if, before any such resolution is put, the meeting decide to request the president to put separately any resolution or resolutions in favour of the promotion of any part or parts or clause or clauses of the Bill not proposed by him to be put separately, he shall put such further or other resolution or resolutions to the meeting as will, consistently with the provisions of this schedule, give effect to that request.

Sched. 1.

(7) Unless a poll is required in manner provided by this schedule, with respect to any resolution for promotion put to the meeting, the decision of the meeting on that resolution, as declared by the president of the meeting, shall be final.

(8) A poll may be required with respect to any such resolution by not less than one hundred electors, or one-twentieth in number of the electors, whichever may be the less, and, if the decision of the meeting on the resolution is against the resolution, by the council.

(9) A requisition for a poll by electors must be in writing signed by the persons making it, and must be delivered to the mayor or chairman within seven days after the date of the meeting, or any adjournment thereof.

(10) A requisition for a poll by the council must be authorised by a resolution of the council, and a copy of the resolution must be delivered to the mayor or chairman within seven days after the meeting or any adjournment thereof. Provided that, if the regulations governing the meetings of the council do not permit of an ordinary meeting of the council being held within the said seven days, the time for the delivery of a copy of the resolution shall be within three days after the date on which an ordinary meeting of the council can first be held subsequently to the date of the meeting of the electors or any adjournment thereof.

(11) The mayor or chairman shall proceed to take the opinion by poll of the electors on the resolution to which any requisition relates, unless a poll is rendered unnecessary by the withdrawal of the requisition for a poll or by a resolution of the council withdrawing the bill, or the part or parts or clause or clauses to which the resolution with reference to which the poll is required relates.

(12) The polls on any number of resolutions may be taken at the same time and by means of the same voting paper.

(13) The mayor or chairman shall count, or cause to be counted, the votes given at a poll under this schedule, and shall as soon as practicable declare the result.

(14) The decision of the mayor or chairman on any question arising in respect of any voting paper shall be final.

(15) Where the mayor or chairman is unable or unwilling to perform any duty or do any act or thing with respect to a poll under this schedule, the council shall appoint some other person to perform the duty or do such act or thing.

(16) Subject to the provisions of this schedule the poll shall be taken in accordance with such regulations as may be prescribed by the Local Government Board and the Local Government Board may prescribe forms for requisitions, voting papers, notices, and other documents under this schedule, and those forms, or forms to the like effect, shall be used.

Sched. 2.

SECOND SCHEDULE.

ENACTMENTS REPEALED AS TO ENGLAND.

Session and Chapter.	Short Title.	Extent of Repeal.
35 & 36 Vict. c. 91.	The Borough Funds Act, 1872.	In section four, the words from "Provided "further" to the end of the section. In section five, the words "or one of Her "Majesty's principal Secretaries of State, "as the case may be," and the words "or "Secretary of State." In section six, the words, "by one of Her "Majesty's principal Secretaries of State, "or" and the words "as the case may be." In section seven, the words "or one of Her "Majesty's principal Secretaries of State." In section eleven, the words "or the metro-"politan area as defined by the Metropolis "Management Act, 1855."

STATUTORY RULES AND ORDERS, 1903.
No. 933.

BOROUGH, ENGLAND, AND DISTRICT COUNCIL, ENGLAND.

THE BOROUGH FUNDS ACTS (POLLS) ORDER, 1903, DATED OCTOBER 31, 1903.

45,914

To the Councils of several Metropolitan Boroughs;—

To the Councils of the several Municipal Boroughs and Urban Districts in England and Wales;—

And to all others whom it may concern.

Whereas by section 1 of the Borough Funds Act, 1903 (herein-after referred to as "the Act"), it is enacted that no expense in relation to the promotion of a Bill in Parliament shall be charged by the council of a borough or urban district under the Borough Funds Act, 1872, unless the requirements contained in the First Schedule to the Act have been complied with:

And whereas by section 9 of the Act, the expression "council" is defined as including the council of every borough and of every urban district, the expression "borough" is defined as including a metropolitan borough, the expression "electors" is defined as meaning the parochial electors for the time being enrolled in the register of parochial electors in force for the parishes in a borough or urban district, and the expression "the mayor or chairman" is defined as meaning the mayor of the borough or the chairman of the urban district council;

And whereas the First Schedule to the Act contains regulations for meeting and polling of electors, and by paragraph (16) of that Schedule it is provided as follows:—

> "(16) Subject to the provisions of this schedule the poll shall be taken in accordance with such regulations as may be prescribed by

the Local Government Board, and the Local Government Board may prescribe forms for requisitions, voting papers, notices, and other documents under this schedule, and those forms, or forms to the like effect, shall be used."

Now therefore, We, the Local Government Board, in the exercise of Our powers in that behalf, and subject to any departure to which We may hereafter assent and to any direction which We may hereafter give, do hereby prescribe, for use under the First Schedule to the Act, the several forms which are set forth in the Schedule to this Order and which form the subject-matter of provisions in the regulations contained in this Order and herein-after referred to as "the regulations," and We do hereby Order that the regulations shall apply to and be observed for the purposes of or in connexion with every poll under the Act.

THE REGULATIONS.

DEFINITION.

ARTICLE 1.—In the regulations—

The expression "returning officer" means, as the case may be, the mayor of the borough, or the chairman of the urban district council, or the person appointed by the council in accordance with the provisions of the paragraph numbered 15 in the First Schedule to the Act.

REQUISITION FOR POLL BY ELECTORS.

ARTICLE 2.—Every requisition for a poll by electors shall be in the Form No. 1 in the First Schedule to this Order.

WITHDRAWAL OF REQUISITION FOR POLL BY ELECTORS.

ARTICLE 3.—A requisition for a poll by electors may be withdrawn by a notice delivered to the returning officer not later than the third day before the day fixed for the poll. The notice shall be in the Form No. 2 in the First Schedule to this Order.

WITHDRAWAL OF REQUISITION FOR A POLL BY THE COUNCIL.

ARTICLE 4.—A requisition for a poll by the council may be withdrawn by a resolution of the council, of which resolution a copy shall be delivered to the returning officer not later than the third day before the day fixed for for the poll.

WITHDRAWAL OF BILL OR PART OR PARTS OR CLAUSE OR CLAUSES.

ARTICLE 5.—Where the council after a requisition for a poll resolve to withdraw the Bill or the part or parts or clause or clauses to which the resolution with reference to which the poll is required relates, a copy of the resolution of the council for such withdrawal shall be delivered to the returning officer not later than the third day before the day fixed for the poll.

NOTICE THAT NO POLL WILL BE TAKEN.

ARTICLE 6.—If by the withdrawal of the requisition for a poll or by the withdrawal of the Bill or the part or parts or clause or clauses to which the resolution with reference to which the poll is required relates, a poll is rendered

Article 6. unnecessary, the returning officer shall give public notice stating that no poll will be taken. The notice shall be in the Form No. 3 in the First Schedule to this Order.

APPOINTMENT OF OFFICE AND PROVISION OF NECESSARIES FOR PURPOSES OF THE POLL.

ARTICLE 7.—(1) The returning officer shall appoint an office in the borough or urban district for the purposes of the poll.

(2) The returning officer shall provide such polling stations, boxes, voting papers, stamping instruments, copies of register of parochial electors, and other things, appoint and pay such officers, employ and pay such persons, and do such other acts and things as may be necessary for effectually conducting the poll and for carrying into effect the rules set forth in the Second Schedule to this Order.

DAYS AND HOURS OF POLL.

ARTICLE 8.—(1) Every poll shall be held on a day which shall be fixed by the returning officer, and shall be not earlier than the tenth day nor later than the fourteenth day after that on which, as the case may be, the requisition for the poll by electors or a copy of the resolution authorising the requisition for the poll by the council was delivered to the returning officer.

(2) The hours during which the poll shall be open shall be fixed by the returning officer, so, however, that the poll shall always be open between the hours of six and eight in the evening.

POLLING DISTRICTS.

ARTICLE 9.—(1) (*a*) If the borough or urban district is divided into wards for the election of councillors, and a separate list or separate lists of electors will be available for each of those wards, each ward shall be a polling district for the poll.

(*b*) If the borough or urban district is not so divided, but is divided into polling districts for the election of councillors, and a separate list or separate lists of electors will be available for each of those districts, each district shall be a polling district for the poll.

(*c*) If neither paragraph (*a*) nor paragraph (*b*) of this regulation applies to the borough or urban district, the returning officer may, if he thinks fit, divide the borough or urban district into polling districts for the poll, but each district shall consist of an area for which a separate list or separate lists of electors will be available.

(2) If the borough or urban district is divided into polling districts for the poll, each elector shall give his vote in the polling district in which the property in respect of which he is entitled to vote is situate, and if it is situate in more than one polling district, he may vote in any one (but in one only) of the polling districts in which it is situate.

POLLING PLACES AND STATIONS.

ARTICLE 10.—The returning officer shall determine the number and situation of the polling places and polling stations in a polling district.

Provided as follows:—

(*a*) No premises licensed for the sale of intoxicating liquor shall be used for a polling station;

Article 10.

(*b*) Where the number of electors in the borough or urban district, or (if the borough or urban district is divided into polling districts) in any polling district, is not more than five hundred, only one polling station shall, unless the council otherwise direct, be provided for the borough or urban district or polling district; and so on for each additional five hundred electors, or for any less number of electors over and above the last five hundred.

NOTICE OF THE POLL.

ARTICLE 11.—(1) The returning officer, seven clear days at least before the day fixed for a poll, shall give public notice thereof.

The notice shall specify—

(*a*) the resolution or resolutions as to which the poll is to be taken;

(*b*) the day and hours fixed for the poll;

(*c*) the situation and allotment of the polling place or polling places, and if there be more than one polling place or polling station, the description of the persons entitled to vote at each polling place and polling station.

(2) The notice shall be in the Form No. 4 in the First Schedule to this Order.

PRESIDING OFFICERS.

ARTICLE 12.—(1) The returning officer, or some person appointed by him for the purpose, shall preside at each polling station.

The person presiding at any polling station is hereinafter referred to as the presiding officer.

(2) If the returning officer presides at a polling station the regulations, including the rules set forth in the Second Schedule to this Order, so far as the regulations and rules relate to a presiding officer, shall, with the necessary modifications, apply to the returning officer in that capacity.

COMPARTMENTS OF POLLING STATIONS.—VOTING STATIONS.

ARTICLE 13.—The returning officer shall furnish every polling station with such number of compartments in which the voters can mark their votes screened from observation, and shall furnish each presiding officer with such number of voting papers as may be necessary for effectually taking the poll.

QUESTIONS TO ELECTOR.

ARTICLE 14.—(1) The presiding officer may, and, if required by any elector, shall put to any elector at the time of his applying for a voting paper, but not afterwards, the following questions, or one of them, and no other:—

(*a*) Are you the person entered in the parochial register for the parish of or for the ward in this borough or urban district as follows [*read the whole entry from the register*]?

(*b*) Have you already voted at the present poll?

(2) A person required to answer either of these questions shall not receive a voting paper or be permitted to vote until he has answered it.

PROCEDURE AT POLL.

ARTICLE 15.—(1) Each voting paper, which shall be in the Form No. 1 set forth in the Third Schedule to this Order, shall show every resolution upon which the poll is taken, and shall have a number printed on the back, and shall have attached a counterfoil with the same number printed on the face. At the time of voting the voting paper shall be marked on both sides with an official mark, either stamped or perforated, and shall be delivered to the voter within the polling station, and the number of the voter on the register of voters shall be marked on the counterfoil, and the voter having secretly marked his vote on the paper, and folded it up so as to conceal his vote, shall place it in a closed box in the presence of the presiding officer, after having shown to him the official mark at the back.

(2) If in the register of parochial electors for a parish, the same number is placed opposite to the name of more than one parochial elector, the returning officer shall put a distinguishing mark on each part of the register which contains numbers used in other parts of the register, and when the number of any voter on any part of the register is entered on the counterfoil of a voting paper, the mark on that part shall also be entered thereon.

(3) After the close of the poll the boxes shall be sealed up, so as to prevent the introduction of additional voting papers, and the returning officer shall take the boxes into his custody, and that officer shall open the boxes and ascertain the result of the poll by counting the votes given for and against each resolution upon which the poll is taken.

DECLARATION OF RESULT OF POLL.

ARTICLE 16.—(1) The declaration of the result of the poll shall be in the Form No. 5 in the First Schedule to this Order.

(2) The returning officer making the declaration shall forthwith cause a copy of it to be fixed on the front of the building in which the votes have been counted.

(3) The returning officer shall cause public notice to be given of the result of the poll as declared, and shall announce the result to the council.

CONDUCT OF POLL.

ARTICLE 17.—The poll shall be conducted in accordance with the rules set forth in the Second Schedule to this Order.

PUBLICATION OF NOTICES.

ARTICLE 18.—Any public notice required by this order shall be given by posting the same on or near the principal door of each church and chapel in the borough or urban district, and in some conspicuous place or places within the borough or urban district.

MISNOMER.—INACCURATE DESCRIPTION.

ARTICLE 19.—No misnomer or inaccurate description of any person or place named in any notice under this Order shall hinder the full operation of that notice with respect to that person or place, provided the description of that person or place is such as to be commonly understood.

TITLE OF ORDER.

Article 20.

ARTICLE 20.—This Order may be cited as the "Borough Funds Acts (Polls) Order, 1903."

SCHEDULES.

FIRST SCHEDULE.

FORM No. 1.

Form of Requisition of Electors.

We, the undersigned electors of the [borough] [urban district] of hereby require a poll of the electors to be taken with reference to the [resolution] [resolutions] put to the public meeting held on the day of , 19 , in favour of the promotion of [part or parts or clause or clauses of] the bill, intituled a bill , which has been deposited in Parliament by the council.

Signature of elector.	Address of elector.

Dated this day of , 19 .

FORM No. 2.

Notice of Withdrawal of Requisition for Poll by Electors.

WHEREAS by a requisition bearing date the day of 19 , we, the undersigned electors of the [borough] [urban district] of required a poll of the electors to be taken with reference to the [resolution] [resolutions] put to the public meeting held on the day of , 19 , in favour of the promotion of [part or parts or clause or clauses of] the bill, intituled a bill , which has been deposited in Parliament by the council.

Notice is hereby given that we, the electors aforesaid, do hereby withdraw the said requisition.

Signature of elector.	Address of elector.

Dated this day of , 19 .

FORM No. 3.

Notice that no Poll will be taken.

[BOROUGH] [URBAN DISTRICT] OF .

IN PARLIAMENT: SESSION .

(*Title or Short Title of Bill.*)

WHEREAS a requisition was made that a poll of the electors of the abovenamed [borough] [urban district] be taken with reference to the [resolution] [resolutions] put to the public meeting held on the day of , 19 ,

Sched. 1. in favour of the promotion of [part or parts or clause or clauses of] the bill, the title of which is set forth above.

[And whereas the requisition aforesaid has been withdrawn.]

[And whereas the council has withdrawn (part or parts or clause or clauses of) the bill above referred to].

I do hereby give notice that the poll for which the said requisition was made will not be taken.

Dated this day of , 19 .

Returning officer.

FORM No. 4.

Notice of Poll.

[BOROUGH] [URBAN DISTRICT] OF

IN PARLIAMENT: SESSION .

(*Title or Short Title of Bill.*)

WHEREAS a requisition has been made that a poll of the electors of the above-named [borough] [urban district] be taken with reference to the [resolution] [resolutions] put to the public meeting of electors held on the day of , 19 , in favour of the promotion of [part or parts or clause or clauses of] the bill, the title of which is set forth above, and such [resolution] [resolutions] [was] [were] in the following terms:—

* Here insert the resolution or resolutions as to which the Poll is to be taken.

*

NOTICE IS HEREBY GIVEN—

1. That a poll of the electors with reference to the [resolution] [resolutions] above set forth will be taken on day of of , 19 , between the hours of and .

† If the borough or district is not divided into polling districts for the purposes of the poll, paragraph 2 should be omitted.

†2.—(1.) That each elector must vote in the polling district in which the property in respect of which he votes is situate, and if it is situate in more than one polling district he may vote in any one (but in one only) of such polling districts.

(2.) The polling districts are as follows:—

* If only one polling place or station, adapt form accordingly.

*3. The situation and allotment of the polling places and polling stations and the description of the persons entitled to vote thereat are as follows:—

Dated this day of , 19 .

Returning officer.

Office for purposes of poll.

FORM No. 5.

Declaration of Result of Poll.

[BOROUGH] [URBAN DISTRICT] OF .

IN PARLIAMENT: SESSION .

(*Title or Short Title of Bill.*)

WHEREAS a poll of the electors of the above-named [borough] [urban district] was taken on the day of , 19 , with reference to the following [resolution] [resolutions] put to the public meeting held on the day of , 19 in favour of the promotion of [part or parts or clause or clauses of] the bill, the title of which is set forth above.

Sched. 1.

Resolutions.

(1.)
(2.)

I, the undersigned, being the Returning Officer at the said poll, do hereby declare that the number of votes recorded thereat is as follows:—

In favour of the Resolution No. 1 .. .. votes.
Against the Resolution No. 1 .. .. .. votes.

Majority in favour [*or* against *as the case may be*] .. ..

In favour of the Resolution No. 2 .. .. votes.
Against the Resolution No. 2 .. .. .. votes.

Majority in favour [*or* against *as the case may be*] .. ..

Dated this day of , 19 .

Returning officer.

SECOND SCHEDULE.

Rules for Polls.

1. The returning officer shall provide each polling station with materials for voters to mark the voting papers, with instruments for stamping thereon the official mark, and with copies of the register of voters, or such part thereof as contains the names of the voters allotted to vote at that station. He shall keep the official mark secret.

2. The returning officer shall cause directions for the guidance of the voter to be printed in conspicuous characters, and placarded outside every polling station and in every compartment of every polling station. Such directions shall be in the Form No. 2 in the Third Schedule to the Borough Funds Acts (Polls) Order, 1903.

3. The presiding officer appointed to preside at each station shall keep order at his station, and, for that purpose, shall regulate the number of electors to be admitted at a time.

4. Every box for the reception of voting papers shall be so constructed that the voting papers can be introduced therein, but cannot be withdrawn therefrom, without the box being unlocked. The presiding officer at any polling station, just before the commencement of the poll, shall show the box empty to such persons, if any, as may be present in the station, so that they may see that it is empty, and shall then lock it up, and place his seal upon it in such manner as to prevent its being opened without breaking the seal, and shall place it in his view for the receipt of voting papers, and keep it so locked and sealed.

5. Immediately before a voting paper is delivered to an elector, the number, name, and description of the elector as stated in the copy of the register of voters shall be called out, and a mark shall be placed in the said copy of the register against the number of the elector, to denote that he has received a voting paper, but without showing the particular voting paper which he has received.

6. The presiding officer, on the application of any voter who is incapacitated by blindness or other physical cause from voting in manner prescribed

Sched. 2. by the Borough Funds Acts (Polls) Order, 1903, or (if the poll be taken on Saturday) of any voter who declares that he is of the Jewish persuasion, and objects on religious grounds to vote in manner prescribed, or of any voter who makes such a declaration as herein-after mentioned that he is unable to read, shall cause the vote of the said voter to be marked on a voting paper in manner directed by the voter, and the voting paper to be placed in the box, and the name and number on the register of voters of every voter whose vote is marked in pursuance of this rule, and the reason why it is so marked, shall be entered on a list, hereinafter called "the list of votes marked by the presiding officer."

The said declaration herein-after referred to as "the declaration of inability to read," shall be made by the voter at the time of polling, before the presiding officer, who shall attest it in the Form No. 3 in the Third Schedule to the Borough Funds Acts (Polls) Order, 1903, and no fee, stamp, or other payment shall be charged in respect of the declaration, and the said declaration shall be given to the presiding officer at the time of voting.

7. A voter who has inadvertently dealt with his voting paper in such manner that it cannot be conveniently used as a voting paper, may, on delivering to the presiding officer the voting paper so inadvertently dealt with, and proving the fact of the inadvertence to the satisfaction of the presiding officer, obtain another voting paper in the place of the voting paper so delivered up (herein-after called "a spoilt voting paper"), and the spoilt voting paper shall be immediately cancelled.

8. The presiding officer of each station, as soon as practicable after the close of the poll, shall make up into separate packets sealed with his seal,—

(1.) Each box in use at his station, unopened but with the key attached: and

(2.) The unused and spoilt voting papers, placed together; and

(3.) The marked copies of the register of voters, and the counterfoils of the voting papers; and

(4.) The list of votes marked by the presiding officer, and a statement of the number of the voters whose votes are so marked by the presiding officer under the heads "physical incapacity," "Jews," and "unable to read," and the declarations of inability to read;

and shall deliver the said packets to the returning officer, by whom the votes are to be counted, unless the presiding officer is himself the returning officer.

The packets shall be accompanied by a statement made by the presiding officer, showing the number of voting papers entrusted to him, and accounting for them under the heads of voting papers in the box, unused and spoilt.

9. The returning officer, while counting and recording the number of voting papers and counting the votes, shall keep the voting papers with their faces upwards, and take all proper precautions for preventing any person from seeing the numbers printed on the backs of the papers.

10. The returning officer shall, so far as practicable, proceed continuously with counting the votes, allowing only time for refreshment, and excluding, if and so far as he thinks it necessary, the hours between the close of the poll and nine o'clock on the succeeding morning. During the excluded time the returning officer shall place the voting papers and other documents relating to the poll under his own seal, and shall otherwise take proper precautions for the security of the said papers and documents.

THIRD SCHEDULE.

Form No. 1.

Form of Voting Paper.

Counterfoil No.

Note:—
The counterfoil is to have a number to correspond with that on the back of the voting paper.

Form of front of Voting Paper.

(*Title or Short Title of Bill.*)

Poll on the Following Resolutions:—

—	For.	Against.
Are you for or against the resolution in favour of the promotion of—		
1		
2		
3		
4		

Form of back of Voting Paper.

No. .

[Borough] [Urban District] of .

Poll with regard to resolutions as to the promotion of the Bill.

, 19 .

Note.—The number on the voting paper is to correspond with that on the counterfoil.

Directions as to printing Voting Paper.

Nothing is to be printed on the voting paper except in accordance with the Borough Funds Acts (Polls) Order, 1903.

The space in the voting paper as to the resolution or resolutions must be filled up according to circumstances—for example:—

1. If a single resolution in favour of the Bill has been put to the meeting and a poll demanded on it, it will only be necessary to insert the words "The Bill," and no figures will be required; or

2. If separate resolutions have been put to the meeting, one in favour of the whole Bill (except, for example, *Part III. and Clauses* 82 *and* 83), another in favour of *Part III.* separately, and another in favour of *Clauses* 82 *and* 83 *separately*, and a poll has been demanded on all of them, it will be necessary to insert:—

   (1.) The whole of the Bill (*except Part III. and Clauses* 82 *and* 83);

   (2.) *Part III.* of the Bill (relating to);

   (3.) *Clauses* 82 *and* 83 of the Bill (relating to); or

3. If resolutions have been put to the meeting as in the last example and the first resolution in favour of the whole Bill (except *Part III. and Clauses* 82 *and* 83) has been carried and no poll has been demanded

Sched. 3.

upon it, while a poll has been demanded on the second and third resolutions, the latter resolutions only would be inserted, *e.g.* :—

(1.) *Part III.* of the Bill (relating to);

(2.) *Clauses* 82 *and* 83 of the Bill (relating to);

and so on.

FORM No. 2.

Form of Directions for the Guidance of the Voter in voting.

The voter will go into one of the compartments, and, with the pencil provided in the compartment, place a cross thus X in the column of the voting paper headed "For," or in that headed "Against," according as he wishes to vote in favour of or against the resolution opposite to which he places the cross.

The voter may vote in the manner above described on each resolution referred to in the voting paper where more than one resolution is there mentioned.

When the voter has voted, he must fold up the voting paper so as to show the official mark on the back, and leaving the compartment will, without showing the front of the paper to any person, show the official mark on the back to the presiding officer, and then, in the presence of the presiding officer, put the paper into the box provided for its reception, and forthwith quit the polling station.

If the voter inadvertently spoils a voting paper, he can return it to the officer, who will, if satisfied of such inadvertence, give him another paper.

FORM No. 3.

Form of Declaration of inability to read.

I, *A.B.*, of , being numbered on the register of parochial electors for the parish of , do hereby declare that I am unable to read.

A.B., his mark.

day of , 19 .

I, the undersigned, being the presiding officer for the polling station for the [Borough] [Urban District] of do hereby certify that the above declaration, having been first read to the above-named *A.B.*, was signed by him in my presence with his mark.

Signed, *C.D.*,
Presiding officer for polling station for the [Borough] [Urban District] of
day of , 19 .

Given under the Seal of Office of the Local Government Board, this Thirty-first day of October, in the year One thousand nine hundred and three.

(L.S.)

WALTER H. LONG,
President.

S. B. PROVIS,
Secretary.

BOROUGH FUNDS (IRELAND) ACT, 1888.

(51 & 52 Vict. c. 53.)

An Act to authorise the application of Funds of Municipal Corporations and other Governing Bodies in Ireland in certain cases.

[24th December, 1888.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited for all purposes as the Borough Funds (Ireland) Act, 1888.

Interpretation of terms.

2. The term "governing body" in this Act shall mean the council of any municipal borough, the urban sanitary authority, town or township commissioners, or other body acting under any general or local Act of Parliament for the management, improvement, cleansing, paving, lighting, and otherwise governing places or districts; the term "district" shall mean the borough, place, township, or district within which the governing body may for the time being have jurisdiction; the term "Local Government Board" shall mean the Local Government Board for Ireland; *and the term, "Chief Secretary" shall mean the Chief Secretary for the time being to the Lord Lieutenant of Ireland.*

The words in italics were repealed by the Statute Law Revision Act, 1908 (8 Edw. 7, c. 49).

By the Local Government (Ireland) Act, 1898 (61 & 62 Vict. c. 37), the Borough Funds (Ireland) Act, 1888, is made to apply to county councils (s. 17), providing:

County councils in Ireland.

> The council of a county shall have the same powers of opposing Bills in Parliament, and of prosecuting and defending legal proceedings necessary for the promotion or protection of the interests of the inhabitants of the county, or any part thereof, as are conferred on the governing body in any district by the Borough Funds (Ireland) Act, 1888; and that Act shall extend to a county council as if they were a "governing body" and the county were their district: provided that—
>
> (a) no approval of voters shall be required for any proceedings under this section; and
>
> (b) this section shall not empower a county council to promote any Bill in Parliament, or to incur or raise any expenses in relation to such promotion.

County boroughs in Ireland.

> As regards county boroughs, the Act provides by s. 21 (2), as follows:
>
> (b) The provisions of this Act relating to main roads, coroners (except as to property qualification), byelaws, or the Borough Funds (Ireland) Act, 1888, shall not apply;
>
> (c) No approval of voters shall be necessary to enable the council of a county borough to oppose a Bill in Parliament pursuant to the provisions of the Borough Funds (Ireland) Act, 1888;

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The Municipal Local Bills (Ireland) Act, 1888 (51 & 52 Vict. c. 34), which was passed before the Borough Funds (Ireland) Act, 1888, provides:

> 1. This Act may for all purposes be cited as the Municipal Local Bills (Ireland) Act, 1888.
>
> 2. When, in the judgment of a municipal corporation in Ireland, it is expedient for such corporation to promote any local or personal Bill or Bills in Parliament, for the purpose only of consolidating existing debts, and of creating new stock within the limits of existing borrowing powers, or of borrowing powers hereafter conferred by Parliament, it shall be lawful for such corporation to apply the borough fund, borough rate, or other the public funds or rates under the control of such corporation to the payment of the costs and expenses attending the same; and when there are several funds or rates under the control of the corporation, such corporation shall determine out of which fund or funds, rate or rates, such expense shall be payable, and in what proportions.
>
> 3. No payment to any member of a municipal corporation for acting as counsel or agent in promoting any such Bill shall be charged as aforesaid.
>
> 4. No expense in promoting any Bill or Bills in Parliament shall be so charged as aforesaid, unless incurred in pursuance of a resolution of an absolute majority of the whole number of the corporation at a meeting of the corporation after ten clear days notice by public advertisement of such meeting and of the purpose thereof in some local newspaper published or circulating in the municipal borough, such notice to be in addition to the ordinary notices required for summoning such meeting, nor unless such resolution shall have been published twice in some newspaper or newspapers circulating in the municipal borough, and no further expense shall be incurred or charged as aforesaid after the deposit of the Bill, unless the propriety of such promotion shall be confirmed by such absolute majority at a further special meeting of the corporation to be held in pursuance of a similar notice not less than fourteen days after the deposit of the Bill in Parliament.
>
> 5. Nothing in this Act shall extend or be construed to alter or affect any special provision which is or shall be contained in any other Act for the payment of the costs, charges, and expenses intended to be provided for by this Act, or to take away or diminish any rights or powers now possessed or enjoyed by any municipal corporation, or which are or shall be vested in or exercisable by the inhabitants of any municipal borough, under general or special Act.

By Standing Order 173 of the House of Commons, it is provided that, "Whenever by any Bill application is made by or on behalf of any urban district council, or town or other commissioners in Ireland for any new powers, or for any increased or additional powers, the promoters shall be required to obtain a certificate under the seal of the Local Government Board of Ireland, setting forth whether such application is made with or without the sanction and approval of the said Local Government Board, which certificate shall be produced before the committee to whom the Bill is referred, and shall be reported upon by the said committee." See also corresponding Standing Order of the House of Lords, No. 135.

Costs of promoting or opposing parliamentary and other proceedings for benefit of

3. When in the judgment of a governing body in any district it is expedient for such governing body to promote or oppose any local and personal Bill or Bills in Parliament, or to prosecute or defend any legal proceedings necessary for the promotion or protection of the interests of the inhabitants of the district, it shall be lawful for such governing body to apply the borough fund, borough rate, or other the public funds or

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rates under the control of such governing body, to the payment of the costs and expenses attending the same; and when there are several funds or rates under the control of the governing body, such governing body shall determine out of which fund or funds, rate or rates, such expense shall be payable, and in what proportions: Provided that nothing contained in this Act shall authorise any governing body to promote any Bill in Parliament for the establishment of any gas or water works to compete with any existing gas or water company established under any Act of Parliament: Provided also that no powers contained in this section shall apply in any case where the promotion of or opposition to a Bill by a governing body has been decided by a Committee of either House of Parliament to be unreasonable or vexatious.

inhabitants to be charged on borough and local funds, except in certain cases.

See note under s. 2 of the Borough Funds Act, 1872, *ante* p. 1036.

No payment to member of governing body to be so charged.

4. No payment to any member of a governing body for acting as counsel or agent in promoting or opposing any such Bill shall be charged as aforesaid.

Costs of promoting or opposing Bills to require sanction of special meetings, and Local Government Board or Chief Secretary.

5. No expense in relation to promoting or opposing any Bill or Bills in Parliament shall be charged as aforesaid unless incurred in pursuance of a resolution of an absolute majority of the whole number of the governing body at a meeting of the governing body, after ten clear days notice by public advertisement of such meeting and of the purpose thereof in some newspaper published or circulating in the district; such notice to be in addition to the ordinary notices required for summoning such meeting: nor unless such resolution shall have been published twice in some newspaper or newspapers circulating in the district, and shall have received, in respect of matters within the jurisdiction of the Local Government Board the approval of such Board, and in respect of other matters the approval of the Chief Secretary; and in case of the promotion of a Bill in Parliament no further expense shall be incurred or charged as aforesaid after the deposit of the Bill, unless the propriety of such promotion shall be confirmed by such absolute majority at a further special meeting to be held in pursuance of a similar notice not less than fourteen days after the deposit of the Bill in Parliament. In submitting a resolution to the Local Government Board or the Chief Secretary, the governing body shall supply all such information concerning the matters in question as may appear necessary to the Local Government Board or the Chief Secretary, as the case may be.

See the notes to s. 4 of the English Act, *ante*, p. 1037.

Provision as to approval of Local Government Board, etc.

6. The approval of the Local Government Board, or of the Chief Secretary, as the case may be, shall not be given to any such resolution as aforesaid until the expiration of seven days after the second publication thereof as provided by this Act, and in the meantime any person qualified to vote at the election of the governing body of such district may give notice in writing to the Local Government Board, or the Chief Secretary, objecting to such approval.

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Provided always that such approval shall be given within one calendar month after the expiration of the said seven days, unless where the Local Government Board or Chief Secretary, as the case may be, shall deem it expedient, before giving such approval, to direct a local inquiry to be held as herein-after provided, in which such case direction shall be given within the said calendar month ; and in the event of a local inquiry being directed the Local Government Board or Chief Secretary, as the case may be, shall by the order directing such inquiry limit the time within which such approval shall be given or withheld.

Vote of the electors.

7. No expense of promoting or opposing any Bill in Parliament shall be charged as aforesaid, unless such promotion or opposition shall have been approved by a special resolution of the persons qualified to vote at an election of the members of the governing body of such district, to be passed at a meeting summoned as herein-after mentioned.

A meeting for the purpose of passing any special resolution for the purposes of this Act shall be summoned by the mayor or chairman for the time being of the governing body of the district, and a month's previous notice of the summoning of such meeting, stating the time and place where the same is to be held, shall be given in some newspaper or newspapers circulating in the district, and by causing notices of the same to be posted in the places in which notices of such governing body are usually posted.

The mayor or chairman of the governing body of such district, or in case of his absence some one of the governing body of such district appointed with the consent of the majority of the persons present at such meeting, shall be chairman of such meeting. Such chairman shall propose to the meeting the resolution for the application of the funds of the district in promoting or opposing the Bill in question, and the meeting shall decide by a majority of the persons present at the meeting and qualified to vote at the election of members of the governing body of such district, and voting for or against such application : Provided always, that if five persons present at the meeting and qualified to vote as aforesaid shall demand that the application of the funds of the district in promoting or opposing the Bill in question shall be decided by a poll, such poll shall be taken of the persons qualified as aforesaid in the way and subject to the conditions prescribed in Schedule I. to this Act.

Where a special resolution is passed by any such meeting, and no poll is demanded, or where a poll is demanded and the demand is withdrawn at the instance of the persons making the same, the chairman shall make and sign a declaration to that effect, and shall transmit the same to the Local Government Board in Dublin.

All expenses properly and necessarily incurred in giving the notices and in convening and holding the meetings required by this section, and all expenses properly and necessarily incurred in taking a poll, if a poll is taken, shall, whether the proposed Bill is proceeded with or not, be chargeable upon the funds or rates upon which the expenses of promoting or opposing such Bill are made chargeable under this Act.

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Costs to be examined.

8. All costs, charges, and expenses incurred under the provisions of this Act shall, before the same become chargeable, be examined and allowed by an auditor of the Local Government Board.

Provision respecting local inquiry.

9. The Local Government Board or Chief Secretary shall have power to direct a local inquiry to be held upon any application under this Act, by any person or persons whom they may respectively nominate for the purpose, and to require security to be given by the governing body for the costs and expenses of such local inquiry.

Saving.

10. Nothing in this Act shall extend or be construed to alter or affect any special provision which is or shall be contained in any other Act for the payment of the costs, charges, and expenses intended to be provided for by this Act, or to take away or diminish any rights or powers now possessed or enjoyed by any governing body, or which are or shall be vested in or exercisable by the inhabitants of any district under general or special Act.

Repeal of 10 & 11 Vict. c. 34, s. 142.

11. The one hundred and forty-second section of the Towns Improvement Clauses Act, 1847, is hereby repealed so far as the same is inconsistent with the provisions of this Act.

Limitation of Act.

12. The provisions of this Act shall not extend to applications for any Bill in Parliament for any object which would, for the time being, be attainable by provisional order.

SCHEDULES.

SCHEDULE I.

Section 7.

RULES FOR TAKING A POLL.

1. The presiding officer, for the purpose of taking the poll, shall be the mayor or chairman of the governing body of the district, or in case of his absence the chairman of the meeting at which the poll was demanded, and all powers and duties by the Act vested in or imposed on the presiding officer, and all other duties requisite to be performed by him in relation to such taking the poll, shall be exercised by such mayor or chairman as aforesaid.

2. If the office of mayor or chairman of the governing body is vacant at the time when any such power or duty must be exercised or performed, or if the mayor or chairman of the governing body, or the chairman of the said meeting, as the case may be, from illness or other sufficient cause, is unable to exercise or perform such powers or duties, or is absent or refuses to act, some other person shall be appointed by the governing body to exercise or perform such powers and duties.

3. The governing body shall before or during the poll appoint a competent number of persons to assist the presiding officer in conducting and completing the same.

4. The presiding officer shall within three days after the meeting at which the poll was demanded, but not less than seven days before the day appointed for the collection of the voting papers, publish a notice signed by him and specifying the date and place of the said meeting, the resolution proposed

Sched. 1. thereat, the facts that a poll was demanded and will be taken, the day or days on which the voting papers will be delivered and the day on which they will be collected, and the place for the examination and casting up of the votes; and shall also cause copies of such notice to be affixed on the usual place or places for affixing notices in the district.

5. The poll shall be taken by voting papers in the form in Schedule II. to this Act; and the presiding officer shall cause voting papers in the said form to be prepared, and shall insert therein the resolution upon which the poll is to be taken, and the date and place of the meeting at which such resolution was proposed, and the day and time when the voting papers are to be collected.

6. The presiding officer, three days at least before the day of collection of the voting papers, shall cause one of such voting papers to be delivered, by persons appointed by him for that purpose, at the address stated in the register or list for the time being of each person qualified to vote at an election of the members of the governing body of the district.

7. Each voter shall write his initials in the voting paper delivered to him under the heading "in favour of" or "against" according as he votes for or against the resolution, and shall sign such voting paper.

8. Any voter unable to write shall affix his mark at the foot of the voting paper in presence of a witness, who shall attest and write the name of the voter against the mark, as well as the initials of such voter, under the heading "in favour of" or "against," according as such voter intends to vote for or against the resolution.

9. The presiding officer shall cause the voting papers to be collected on the day of collection by such persons as he may appoint.

10. No voting paper shall be received or admitted unless the same has been delivered at the address of the voter as aforesaid, nor unless the same is collected by the persons appointed for that purpose: Provided that—

(a.) If any person entitled to receive a voting paper has not received a voting paper as aforesaid, he shall, on personal application before the day of collection to the presiding officer, be entitled to receive a voting paper from him, and to fill up the same in his presence, and then and there to deliver the same to him:

(b.) If any voting paper duly delivered has not been collected through the default of the presiding officer or the persons appointed to collect the same, the voter in person may deliver the same to the presiding officer before twelve o'clock at noon on the day appointed for the examination and casting up of the votes.

11. The presiding officer shall on the day immediately following the day of the collection of the voting papers, and on as many days immediately succeeding as may be necessary, attend at the place appointed for the examination and casting up of the votes, and ascertain the validity of the votes by an examination of the register or list for the time being of the persons qualified to vote at an election of the members of the governing body of the district, and by examining such persons as he may see fit. He shall cast up such of the votes as he finds to be valid, and to have been duly given, collected, or received, and shall ascertain the number of such votes in favour of and against the adoption of the resolution respectively.

Any three of the persons who demanded the poll may themselves attend or appoint an agent to attend the examination and casting up of the votes;

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any person so attending who obstructs or in any way interferes with the examination and casting up of the votes, may, by order of the presiding officer, be forthwith removed from the place appointed for that purpose, and if so removed shall not be permitted to return.

12. The presiding officer shall forthwith make and sign a declaration of the result of the poll and transmit the same to the Local Government Board in Dublin.

13. If the presiding officer refuses or neglects to comply with any of the provisions of this Schedule relating to the taking of the poll, he shall be liable to a penalty not exceeding fifty pounds, and any person employed for the purpose of the poll, by or under the presiding officer, who is guilty of any such neglect or refusal shall be liable to a penalty not exceeding five pounds, such penalties to be recovered in a summary manner.

14. Any person who—

Fabricates in whole, or in part, or alters, defaces, destroys, abstracts, or purloins any voting paper, or

Personates any person entitled to vote at any poll, or

Falsely assumes to act in the name or on the behalf of any person so entitled to vote, or

Interferes with the delivery or collection of any voting papers, or

Delivers any voting paper under a false pretence of being lawfull authorised so to do,

shall be liable to a penalty not exceeding twenty pounds, or, in the discretion of the court, to imprisonment, with or without hard labour, for any period not exceeding three months, such offence to be prosecuted and penalty to be recovered in a summary manner.

SCHEDULE II.

Form of Voting Paper for Poll taken under Schedule I.

Voting Paper No. ( ).

At a meeting held on the day of 18 , at in the of , it was agreed that the following resolution should be proposed to the persons qualified to vote at an election of the members of [*insert the description of the governing body of the district*] of .

[*Set out the resolution.*]

———	In favour of.	Against.
Do you vote in favour of or against the adoption of the above resolution.		

(Signed) .
or the mark of .
Witness to the mark .

Directions to the Voter.

The voter must write his initials under the heading "in favour of" or "against," according as he votes for or against the resolution, and must subscribe his name and address at full length.

Any voter unable to write shall affix his mark at the foot of the voting paper in presence of a witness, who shall attest and write the name of the

Sched. 2. voter against the mark, as well as the initials of such voter, under the heading "in favour of" or "against" according as such voter intends to vote for or against the resolution.

This paper will be collected on the day of between the hours of and .

PUBLIC AUTHORITIES PROTECTION ACT, 1893.

(56 & 57 Vict. c. 61.)

An Act to generalize and amend certain statutory provisions for the protection of persons acting in the execution of statutory and other public duties.

[5th December, 1893.]

Be it enacted as follows:

Proceedings against persons acting in execution of statutory or other public duty.

1. Where after the commencement of this Act any action, prosecution, or other proceeding is commenced in the United Kingdom against any person for any act done in pursuance, or execution, or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, duty, or authority, the following provisions shall have effect:

Limitation of time.

(a) The action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within six months next after the Act, neglect, or default complained of, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof.

Costs.

(b) Wherever in any such action a judgment is obtained by the defendant, it shall carry costs to be taxed as between solicitor and client.

Tender of amends.

(c) Where the proceeding is an action for damages, tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after the tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after the tender or payment, and the defendant shall be entitled to costs, to be taxed as between solicitor and client, as from the time of the tender or payment; but this provision shall not affect costs on any injunction in the action:

(d) If, in the opinion of the court, the plaintiff has not given the defendant a sufficient opportunity of tendering amends before the commencement of the proceeding the court may award to the defendant costs to be taxed as between solicitor and client.

Saving for proceedings by Government departments.

This section shall not affect any proceedings by any department of the Government against any local authority or officer of a local authority.

See note at end of Act.

Repeal of public general Acts.

2. There shall be repealed as to the United Kingdom so much of any public general Act as enacts that in any proceeding to which this Act applies—

(a) the proceeding is to be commenced in any particular place ; or

(b) the proceeding is to be commenced within any particular time ; or

(c) notice of action is to be given ; or

(d) the defendant is to be entitled to any particular kind or amount of costs, or the plaintiff is to be deprived of costs in any specified event ; or

(e) the defendant may plead the general issue ;

Repeal of.

and in particular there shall be so repealed the enactments specified in the schedule to this Act to the extent in that schedule mentioned.

This repeal shall not affect any proceeding pending at the commencement of this Act.

See note at end of Act.

Saving as to Scotland.

3. This Act shall not apply to any action, prosecution, or other proceeding for any act done in pursuance or execution, or intended execution, of any Act of Parliament, or in respect of any alleged neglect or default in the execution of any Act of Parliament, or on account of any act done in any case instituted under an Act of Parliament, when that Act of Parliament applies to Scotland only, and contains a limitation of the time and other conditions for the action, prosecution or proceeding.

Commencement.

4. This Act shall come into operation on the first day of January one thousand eight hundred and ninety-four.

Short title.

5. This Act may be cited as "The Public Authorities Protection Act, 1893."

The older decisions.

The wording of s. 1 of the Act of 1893 is exceedingly wide. Nevertheless, the following decisions under the old law may still be useful for reference. In order to bring a defendant within the benefit of such words as "in the execution of," or "by virtue of any power or authority thereby given," it was held that it was not necessary that he should have acted in strict pursuance of the statute, and that it was sufficient if he was acting *bonâ fide*, and honestly believed himself to be authorised or to be doing his duty (*Carter* v. *Filliter* (1842), C. & M. 498 ; *Hughes* v. *Buckland* (1846), 15 M. & W. 346 ; *Booth* v. *Clive* (1851), 10 C. B. 827 ; *Gaby* v. *Wilts Canal Co.* (1815), 3 M. & S. 580). So long as he "honestly believed," it was held that it was not necessary that there should be reasonable ground for such belief (*Hermann* v. *Seneschal* (1862), 13 C. B. (n. s.) 392). He must have honestly believed in the existence of a state of things which, if it had existed, would have justified his doing the acts complained of under the statute. Some facts, therefore, must have existed, such as might have given rise to an honest belief ; but it was not necessary that the belief should be reasonable

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(*Chamberlain* v. *King* (1871), L. R. 6 C. P. 474; *Agnew* v. *Jobson* (1877), 47 L. J. M. C. 67; *cf. Heath* v. *Brewer* (1864), 15 C. B. (N. S.) 803). A defendant might even have exceeded his power under a statute, yet *bona fides* would bring him within the protection of the statute (*Smith* v. *Wiltshire* (1821), 2 B. & B. 619; *Smith* v. *Shaw* (1829), 10 B. & C. 277). It was the province of the judge to decide whether notice of action was necessary (*Arnold* v. *Hamel* (1854), 9 Ex. 404), but *bona fides* was a question for the jury (*Horn* v. *Thornborough* (1849), 3 Ex. 846; *Kirby* v. *Simpson* (1854), 10 Ex. 358; *Rudd* v, *Scott* (1841), 2 Scott, N. R. 631; *Oakley* v. *Kensington Canal Co.* (1833), 5 B. & Ad. 138; *Beechey* v. *Sides* (1829), 9 B. & C. 806). "The object clearly is to protect persons acting illegally, but in supposed pursuance and with a *bonâ fide* intention of discharging their duty under the Act of Parliament"; *per* Lord ELLENBOROUGH in *Theobald* v *Crichmore* (1818), 1 B. and Ald. 229. Where the law is not exceeded the protection is not required. JERVIS, C.J., in *Read* v. *Coker* (1853), 13 C. B., at p. 861, observed: "It has also been urged that the defendant could not have believed that he acted in pursuance of the Acts referred to, because it was not shown that he knew of them. That is a point which was never made before in any case, and which does not arise on the finding of the jury in this. For if, as they have found, the defendant *bonâ fide* believed he was acting in the prosecution of a legal right, and that he was justified by the law, it is not necessary that he should know the Acts, chapter and section."

Scope of Act.

While the short title of the Act speaks of "public authorities," s. 1 speaks of "any person." Questions, therefore, have arisen as to whether the statute is entirely confined to public authorities or whether it applies to other statutory companies such as railway, gas or water companies, or to individuals acting in pursuance of any Act of Parliament or of any public duty or authority. In an action for injunction to prevent a municipal authority, who were authorised under a special water Act, from allowing the water passing along an aqueduct or conduit to overflow on to the plaintiff's land, LINDLEY, M.R., observed: "Although the language is wide, the key to the enactment is that it is intended, as the title shows, to protect public bodies from expense when they are unsuccessfully sued in respect of acts done, or omitted to be done, in the exercise of statutory powers or duties, and the present case falls within the enactment. It is not necessary to consider what cases, if any, do not fall within the Act although apparently within the words. I add that by way of precaution, because some day there will probably be a great discussion as to what acts or defaults do or do not come within it; but it is sufficient to say we think this case is clearly within the Act" (*Fielding* v. *Morley Corporation*, [1899] 1 Ch. 1, affirmed H. L. *sub nom. Fielden* v. *Morley Corporation*, [1900] A. C. 133).

The port and harbour of Preston are vested in the municipal corporation by statute. The owners of a barque which had grounded in the harbour through alleged negligence of the corporation, brought an action to recover damages. The vessel grounded in 1893 and the action was brought in 1898. Sir F. H. JEUNE, President, held that the above Act applied, and that it was retrospective, and dismissed the action, and the Court of Appeal affirmed this decision (*The* "*Ydun,*" [1899] P. 236). Sir F. H. JEUNE, at p. 239, observed: "The question is, whether the protection of this section of the Act is given to municipal bodies in the execution of duties not strictly municipal or official, but duties arising in connection with a commercial enterprise which they are empowered by Parliament to undertake. It is curious, to begin with, to observe that the language does not in terms refer to a municipal or public authority, the words only are 'any person,' and, limiting one's view to the enacting words of the Act, it is not easy to see why a railway company, for example, a corporation which certainly does acts in pursuance or execution of an Act of Parliament, is not included. This clearly, however, is not what the Act, means, and, as has been pointed out in the case of *Fielding* v. *Morley Corporation* in the Court of Appeal, it must be gathered from the short title of the Act, 'The Public Authorities Protection Act, 1893,' that it is only public authorities that come within the purview of the Act. But the question is, are the acts of a public authority protected when it is acting in pursuance of trade or business which in private hands would be of a private character? Even apart from authority, I should have entertained little doubt on the point. It has been and may be questioned whether, and to what extent, municipal authorities should be authorised by Parliament to engage, possibly in competition, with private traders, in what would otherwise be the subject of private commercial enterprise. But if Parliament decides that a public authority should be so authorised, if it confers on a municipality the right and duty to assume the functions of a trader, it clothes those functions with a public character, and makes them just as much public duties of a public authority as those for the performance of which that authority was created. If a municipality is authorised to supply water or gas, I can see no distinction in character between its acts, its contracts, and its defaults in supplying those articles, and its acts, contracts, and defaults in reparing roads or maintaining street lamps."

A company incorporated by private Act of Parliament for the purposes of completing and maintaining a pier and harbour, and empowered to raise money by rates and duties to be applied for those purposes, and also for the purpose of paying to the shareholders a yearly dividend limited in amount, is a commercial company and not a company acting in the execution of statutory or other public duties within the benefit of the Act (*Attorney-General* v. *Margate Pier and Harbour Proprietors*, [1900] 1 Ch. 749).

A municipal corporation, acting under a provisional order, hired electricity meters from third persons. The plaintiffs brought an action against the corporation for infringement of their patent for electricity meters. Judgment having been given in favour of the corporation it was held that they were entitled under s. 1 (b) of the Act to costs as between solicitor and client (*Chamberlain and Hookham, Ltd.* v. *Bradford Corporation* (1900), 64 J. P. 806).

It has been held in Ireland that the Act has no application in the case of trustees of a loan fund society sued for breach and neglect of their duties as such trustees (*O'Brien* v. *Mitchelstown Loan Fund*, [1903] 1 Ir. R. 282).

A local authority, by virtue of certain private and local Acts of Parliament, obtained the power to acquire and work certain tramways. A passenger on one of the tramways who sustained personal injuries, caused by the alleged negligence of the local authority's servants, commenced an action to recover damages for such injuries more than six months after the injuries were sustained, and it was held that the local authority was protected by s. 1 of the Act, and that therefore the action was barred by the limitation imposed by that section (*Parker* v. *London C. C.*, [1904] 2 K. B. 501. See also *Spittal* v. *Glasgow Corporation* (1905), 6 F. 828).

A local authority, by virtue of an order made by the Light Railway Commissioners, under the Light Railways Act, 1896, and confirmed by the Board of Trade, obtained the power to construct and work electric tramways, the local authority being bound to provide such a service of cars as might be reasonably required in the public interest. A passenger in one of the tramcars who sustained personal injuries caused by the alleged negligence of the local authority's servants, commenced an action to recover damages for such injuries more than six months after the injuries were sustained. *Held* (following *The "Ydun,"* [1899] P. 236, and *Parker* v. *London C. C.*, *supra*), that the plaintiff's cause of action did not depend upon a contract, but arose out of the defendant's duty under their order to carry him safely, and that, therefore the defendants were protected by s. 1 of the Act, and the action was barred by the limitation imposed by that section (*Lyles* v. *Southend-on-Sea Corporation*, [1905] 2 K. B. 1).

In a recent Scotch case it was held that the Act does not protect commercial companies, and that when the liabilities and powers of such a company are transferred to a public authority, such authority cannot as to a liability to which they have succeeded rely upon the statute any more than their predecessors could have done (*Lanarkshire Upper Ward District Committee* v. *Airdrie, Coatbridge and District Water Trustees* (1906), 8 F. 777). See also on the latter point, *English* v. *Metropolitan Water Board*, [1907] 1 K. B. 588.

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A sanitary authority served notices under the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 4, on the owner of premises, requiring him to do certain specified works in respect of what was supposed to be a drain. He complied with the notices, and incurred expense in doing the works. It was discovered that the supposed drain was a sewer, which the sanitary authority was liable to repair, and the executors of the owner brought an action against the sanitary authority to recover the amount of the expenses incurred, as money paid to the use, and at the request, of the defendants. The action was not commenced within six months after the expenses had been paid:—*Held* (following *Waterhouse* v. *Keen* (1825), 4 B. & C. 200, and *Midland Rail. Co.* v. *Withington L. B.* (1883), 11 Q. B. D. 788), that the action was brought for an act done in pursuance or execution or intended execution of the Public Health (London) Act, 1891, within the meaning of the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1, and ought to have been brought within six months, and, therefore, that the defendants were not liable (*Cree* v. *St. Pancras Vestry*, [1899] 1 Q. B. 693).

T. brought an action against the C. Urban District Council for an injunction to restrain them from using land as a cemetery except beyond a radius of 100 yards from his dwelling-house, relying on the prohibition to that effect contained in s. 9 of the Burial Act, 1855 (18 & 19 Vict. c. 128). It was proved at the trial that T. was in fact merely a nominee, for the purposes of this action, of one G. who had sold the fee simple in the land to the defendant council for the purposes of a cemetery. *Held*, that on the principle that a grantor cannot derogate from his own grant the action failed and must be dismissed; and that the action being brought against the defendant council for an "act done in pursuance of public duty" the Act applied, and costs must be taxed as between solicitor and client (*Toms* v. *Clacton U. D. C.* (1898), 62 J. P. 505; 78 L. T. 712. See also *Holford* v. *Acton U. D. C.*, [1898] 2 Ch. 240).

The plaintiffs, being about to erect certain buildings upon land belonging to them within the defendant's district, were served by the defendants with notice that if they did so legal proceedings would be taken against them for infringing the provisions of the Public Health (Buildings in Streets) Act, 1888. The plaintiffs thereupon brought an action against the defendants for a declaration that they were entitled to erect the contemplated buildings without the consent of the defendants. The action having been dismissed with costs, it was held that the defendants were entitled to their costs as between solicitor and client (*Grand Junction Waterworks Co.* v. *Hampton U. D. C.* (1899), 63 J. P. 503).

A public right of way having been obstructed by the owner of the land through which it ran, the county council passed a resolution, under s. 26 of the Local Government Act, 1894, that the powers and duties of the district council, who had failed to take proceedings to protect the right of way, should be transferred to them. The county council then, under an arrangement with the owner of the land, directed the defendants, two of their officials, to drive along the way so as to enable the question of the public right to be raised. The landowner brought an action of trespass against the defendants in which the latter obtained judgment. It was held that the defendants in committing the alleged trespass by the direction of the county council were acting in pursuance, or execution, or intended execution of the public duty or authority of protecting public rights of way, imposed upon the local authority by s. 26 of the Local Government Act, 1894, and were therefore entitled to their costs, as between solicitor and client, under s. 1 of the Act (*Greenwell* v. *Howell*, [1900] 1 Q. B. 535).

An action for libel by a schoolmaster against a school board in whose employment he had been, in respect of statements contained in a resolution of the board stating the reasons for the master's dismissal, was held to come within the Act on the ground that the Act was clearly intended to protect bodies who had rates to make from stale claims being brought against them (*Reid* v. *Blisland School Board* (1901), 17 T. L. R. 626). An action for malicious prosecution was also held to be within the Act (*Bostock* v. *Ramsey U. D. C.*, *infra*).

The defendants, in providing for the lighting of Bradford under the powers of a provisional order, acquired some land which adjoined the Bradford Beck, and upon that they proceeded to erect certain sluices the object of which was to divert the stream so as to supply motive power for the driving of electric machinery placed in the works which they erected on the adjoining land. Part of the plaintiffs' premises was built over the stream. In 1890 a heavy thunderstorm burst over the Bradford Valley, filling the Bradford Beck and causing a flood, which the plaintiffs alleged, by reason of the obstruction of the sluices and the consequent heading back of the water, forced up the covering of the stream and poured into the basement of the plaintiffs' premises, causing damage to large quantities of goods and machinery belonging to the plaintiffs, for which they sued the corporation, and on the trial judgment was given in favour of the corporation with costs as between party and party. It was held on appeal, that the defendants in providing for the lighting of the streets of Bradford under the powers conferred upon them by their provisional order, were acting in execution of "a public duty or authority" within the meaning of s. 1 (b) of the Act; that the judgment obtained by them carried costs to be taxed as between solicitor and client; and that the appeal would be allowed with costs as between party and party (*Ambler & Sons, Ltd.* v. *Bradford Corporation*, [1902] 2 Ch. 585).

An action for an account of fair tolls has been held to be within the Act (*Newcastle* (*Duke of*) v. *Worksop U. D. C.*, [1902] 2 Ch. 145).

Where a district council abated an encroachment upon a main road vested in the county council, and successfully defended an action brought against them for so doing, it was held that the Act entitled them to costs as between solicitor and client (*Harvey* v. *Truro R. D. C.* (1903), 68 J. P. 51).

By an agreement a public authority had, in pursuance of statutory authority, given to the plaintiffs certain powers, reserving to itself the right, by duly giving notice, to determine those powers. The public authority gave notice to the plaintiffs to determine the powers. In an action by the plaintiffs against the public authority, seeking declarations that the notice to determine had not been duly given, and that, by reason of the subsequent passing of an Act of Parliament, the public authority had become incapacitated from determining the powers, the plaintiffs were unsuccessful:—*Held*, that the Act done by the public authority which gave rise to the action was not done in pursuance of an Act of Parliament or of any public duty or authority, and that the plaintiffs were liable to pay to the public authority costs taxed as between party and party only, and not as between solicitor and client (*National Telephone Co.* v. *Hull Corporation* (1903) 68 J. P. 62).

The Act extends to acts by civic officials, for the collection of rates, done in pursuance of public duty (*M'Fadzean* v. *Glasgow Corporation* (1903), 40 S. L. R. 339); also to the managers of a reformatory (*Connelly* v. *Stranraer Reformatory Managers* (1904), 11 S. L. T. 638).

It does not apply to an action against a constable for damages for slander on averments that the constable had knowingly and maliciously made a false charge against the plaintiff (*M'Ternay* v. *Bennett* (1898), 1 F. 333). Nor does it apply to an action against a county council to set aside the election of a councillor (*Stirling* v. *Stirling C. C.* (1904), 7 S. L. T. 351).

The Act does not apply to a county council acting under the provisions of the Public Health (Scotland) Act, 1897, that Act containing special provisions as to the liability of the authorities and the time within which an action must be brought. See s. 3 of the Public Authorities Protection Act, 1893 (*Gilillan* v. *Lanark C. C.* (1902), 9 S. L. T. 432).

The Scottish Courts have held that under the Public Health (Scotland) Acts, the protection given by those Acts and saved by s. 3 of the Act of 1893 does not apply where the acts complained of are done irregularly or in excess of powers or otherwise without warrant (*Edwards* v. *Kinloss P. B.*

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(1891), 18 R. 867; *Mitchell* v. *Aberdeen Magistrates* (1893), 20 R. 253; *Gilillan* v. *Lanark C. C., supra. Duncan* v. *Hamilton Magistrates* (1902), 5 F. 160; *Sutherland* v. *Aberdeen Magistrates* (1894), 22 R. 95).

A medical practitioner in private practice, who gives the statutory notification in a case of illness, erroneously diagnosed by him, is within the scope of the Act; and, if he has been guilty of negligence in giving such notification, any action in respect of such negligence must be commenced within six months (*Salisbury* v. *Gould* (1904), 68 J. P. 158).

The Act does not apply, for the purpose of costs, to proceedings for a rule for a writ of *quo warranto* (*R.* v. *Carter* (1904), 68 J. P. 466).

The magistrates of a Scotch burgh let the town hall to A. for the purpose of a public entertainment. On the day fixed they refused to allow him to use the hall. After a lapse of seven months he sued them for breach of contract. *Held*, that they were not within the protection of s. 1 of the Act, since they were not acting in pursuance of any public duty (*McPhie* v. *Greenock Magistrates* (1905), 7 F. 246).

An action was brought against the commanding officer of a volunteer corps in respect of a street accident alleged to be due to his negligence in selecting horses and drivers for an ammunition waggon. Six months had elapsed before proceedings were instituted. It was held, that, as the cause of action alleged was his neglect of duty in his public capacity of commanding officer training his corps, the action was barred by s. 1 of the Act (*Wilson* v. *MacKay* (1905), 7 F. 168).

A shipowner brought an unsuccessful action against the Tyne Improvement Commissioners in respect of damage done by a fire on one of their staiths. *Held*, that the defendants were entitled to solicitor and client costs; they erected and worked the staith in "intended execution" of statutory powers; and if in constructing it they had deviated a little from such powers, adjoining owners were the only people entitled to complain, and the plaintiff could not rely on that fact (*The "Johannesburg,"* [1907] P. 65).

An action *in rem* does not fall within s. 1 of the Act, and therefore can be commenced after the expiration of six months next after the act, neglect, or default complained of (*The "Burns,"* [1907] P. 137).

It was held that the provisions of the Act had no application to an action in which one local authority sought as against another to set aside an "adjustment" agreement between them on the ground that such agreement had been entered into under a misapprehension as to the law (*Holsworthy U. D. C.* v. *Holsworthy R. D. C.*, [1907] 2 Ch. 62).

The council of a metropolitan borough in which the Public Libraries Act, 1892, was in force, in the course of demolishing some old premises for the purpose of erecting a free library, made a hole in the wall of the adjoining owner's premises and did damage. In an action for damages brought by the adjoining owner subsequent to the expiration of six months after the act complained of, the council pleaded the statute, but it was held that it did not apply (*Walsh* v. *Southwark Borough Council* (1908), 72 J. P. 71).

The words "action, prosecution or other proceeding" include all actions in the Chancery Division for any Act done in pursuance of any Act of Parliament, etc., whether they are actions for an injunction or declaration, or actions partly for an injunction or declaration and partly for damages, but do not include appeals or interlocutory applications (*Fielden* v. *Morley Corporation, ante*, p. 1064; *Harrop* v. *Ossett Corporation*, [1898] 1 Ch. 525; *Toms* v. *Clacton U. D. C., supra; Grand Junction Waterworks Co.* v. *Hampton U. D. C., supra; Ambler* v. *Bradford Corporation, supra*).

Actions for breach of contract and for goods sold not within Act.

An action brought by a contractor or an officer or servant against a local authority for breach of contract is not within the Act (*Davies* v. *Swansea Corporation* (1853), 8 Ex. 808; *Clarke* v. *Lewisham Borough Council* (1902), 67 J. P. 195. See also *National Telephone Co.* v. *Kingston-upon-Hull Corporation, supra*). Nor does the Act apply to an action brought by a contractor when the cause of action alleged is a fraud which induced him to make his contract with the authority (*Pearson* v. *Dublin Corporation*, [1907] A. C. 351). See also *Sharpington* v. *Fulham Guardians*, [1904] 2 Ch. 449; *Lyles* v. *Southend-on-Sea Corporation*, *supra*; and *McPhie* v. *Greenock Magistrates*, *supra*. An act done, however, in relation to a contract may be tortious. See *Sachs* v. *Henderson*, [1902] 1 K. B. 612; *Du Pasquier* v. *Cadbury & Co., Ltd.*, [1903] 1 K. B. 104. The Act does not apply to actions for the price of goods sold and delivered, and for work and labour done (*Milford Docks Co.* v. *Milford Haven U. D. C.* (1901), 65 J. P. 483), nor to an action brought in respect of an act done by an independent contractor. employed by a public authority, in pursuance of his contract with them (*Kent County Council* v. *Folkestone Corporation*, [1905] 1 K. B. 620). In such circumstances neither the public authority (*Kent County Council* v. *Folkestone Corporation*, *supra*) nor the contractor (*Tilling, Ltd.* v. *Dick, Kerr & Co., Ltd.*, [1905] 1 K. B. 562) can claim the benefit of the Act.

Acts done under contracts with local authorities.

Waiver of statute.

In *Midland Rail. Co.* v. *Withington Local Board* (1883), 11 Q. B. D. 788; an urban authority had given the plaintiffs notice to pave under s. 150 of the Public Health Act, 1875, and in default themselves executed the work, and the plaintiffs on demand paid the amount apportioned to them. Both parties then believed that the street was not a highway repairable by the inhabitants at large, but some time afterwards it was discovered that it was such a highway, and the plaintiffs sued to recover back the amount. The money was paid on October 30th, 1880, so that the six months would expire on April 30th, 1881. On April 13th the plaintiffs wrote to the defendants for information as to the result of certain proceedings which were to determine whether the road was a highway or not, and stating that if the local authority were defeated they would expect a return of the money. The defendants replied that they were going to appeal, and would inform the plaintiffs of the result. The action was brought in March, 1882. It was held that the facts did not disclose a waiver by the defendants of the benefit of a section corresponding to that in the text.

In a recent case the plaintiff, having suffered personal injuries owing to the negligent driving of one of the defendants' servants, claimed compensation from the defendants, and negotiations were entered into with a view to settling the plaintiff's claim. More than six months after the alleged act of negligence, the said negotiations having broken down, the plaintiff commenced an action for damages against the defendants. The defendants pleaded the statute. The jury found a verdict for the plaintiff, and also that the defendants had by their conduct induced the plaintiff to delay commencing an action. It was held that the defendants were not debarred from setting up the statute in defence (*Hewlett* v. *London County Council* (1908), 72 J. P. 136).

[The following portion of this note is reproduced from the note in the last (the 7th) edition of Lumley's Public Health, revised by Mr. A. Macmorran, K.C., and the present editor of this work.]

Computation of the six months.

Continuance of injury or damage.

As to the computation of the six months, see *Freeman* v. *Read* (1863), 4 B. & S. 174; *Radcliffe* v. *Bartholomew*, [1892] 1 Q. B. 161; *Goldsmiths' Co.* v. *West Metropolitan Rail. Co.*, [1904] 1 K. B. 1. Where the cause of action is the doing of the act itself, the limitation of time runs from the act; where it is the resulting damage. it runs from the time when the damage results, and where the injurious act is continuing and causes continuous damage, the right of action also continues. See *Whitehouse* v. *Fellows* (1861), 30 L. J. C. P. 305; *Backhouse* v. *Bonomi* (1861), 9 H. L. Cas. 503; *Darley Main Colliery Co.* v. *Mitchell* (1886), 11 App. Cas. 127; *West Leigh Colliery Co.* v. *Tunnicliffe*, [1908] A. C. 27. Where, by an Improvement Act, actions for an injury done by the commissioners under the Act were to be brought within six months *after* the thing done, and the defendants, proceeding under the Act to dig a sewer, cracked the walls of the plaintiff's house, it was held that the plaintiff's right of action was limited to six months after the day on which the crack was occasioned, and did not continue for so long a time as the crack continued (*Lloyd* v. *Wigney* (1830), 6 Bing. 489).

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Where an excavation made by a local authority under a street for the purpose of laying a sewer was not properly filled in, and in consequence a subsidence of the plaintiff's land with injury to houses thereon took place, which began at a period more than six months before and went on continuously down to the commencement of an action by the plaintiff in respect of such subsidence, it was held under the corresponding section of the Public Health Act, 1875, on the authority of *Darley Main Colliery Co.* v. *Mitchell*, *supra*, that the further subsidence, which took place within the six months before action, constituted a distinct cause of action in respect of which the action was maintainable (*Crumbie* v. *Wallsend Local Board*, [1891] 1 Q. B. 503). And see, to the same effect, *Fairbrother* v. *Bury Rural Sanitary Authority* (1889), 37 W. R. 544.

The words "continuance of injury or damage" came up for consideration in a recent case brought under the following circumstances: The plaintiff was injured on June 17th, 1901, in consequence of an alleged act of misfeasance done by the defendant's servants some few days previously, and, whilst still suffering from her injuries, brought her action on October 8th, 1902, but it was held that the action was not maintainable, on the ground that the words "continuance of injury or damage" refer only to those cases where there is a continuing cause of action (*Carey* v. *Bermondsey Borough Council*, [1903] 67 J. P. 111). See also *Copley* v. *Leeds Corporation* (1904), 68 J. P. 196. It has also been held in Scotland that a mere continuance of the injurious effects or damage caused by an accident is not a "continuance of injury or damage" (*Spittal* v. *Glasgow Corporation* (1904), 6 F. 828). In *Harrington* (*Earl of*) v. *Derby Corporation*, [1905] 1 Ch. 205, where damages were claimed for pollution of a river, BUCKLEY, J., said: "The defendants contend that, having regard to s. 1 of the Public Authorities Protection Act, 1893, the plaintiffs can recover damages for no longer period than six months before the issue of the writ. To determine this point it is necessary to ascertain the meaning of the words in the section, 'in case of a continuance of injury or damage.' It cannot be disputed that for one cause of action all damages incident to it must be recovered once and once only, so that, for instance, if by the removal of the soil the defendant causes the walls of the plaintiff's house to crack, the plaintiff's cause of action is one and one only, and that none the less because the house does not at once show all the damage done to it, but manifests subsequently by degrees that the damage had been done. Upon this *Lloyd* v. *Wigney*, *supra*; 4 Moo. & P. 222, was cited, being a case upon the words of an Act which provided that an action must be brought within six calendar months 'after the thing done.' But if the result of the Act is that one damage is done to day and another subsequently, there is nothing to prevent a fresh action *toties quoties* fresh damage is inflicted (*Darley Main Colliery Co.* v. *Mitchell*, *supra*). If as the result of an act done to-day damage results a year later, the cause of action arises, not at the date of the act, but a year later when damage results. No cause of action arises from the act if it at that date created no damage. The right of action arises, not from the act, but from the resulting of damage from the act. *Backhouse* v. *Bonomi*, *supra*, established that proposition. There is, however, a further case with which this action is particularly concerned, viz., a continuing act which produces subsequently from day to day a recurrent damage. There is thus created within the principle which I have stated a fresh cause of action every day, and this, I conceive, is what is referred to in the section by the words 'in case of a continuance of injury or damage.' The words do not mean or refer to a damage inflicted once and for all which continues unrepaired, but a new damage recurring day by day in respect of an act done, it may be, for once and for all at some prior time, or repeated, it may be, from day to day. In such a case there is what CHANNELL, J., in *Carey* v. *Bermondsey Borough Council*, *supra*, calls a continuing cause of action. Where this is the case I think that, within s. 1 of the Public Authorities Protection Act, an action will lie when instituted six months next after the ceasing of the continuing injury or damage. That is, I think, the present case. These plaintiffs are therefore, I think, entitled to recover for a greater period than six months, and up to the period of six years limited by the Statute of Limitations."

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In a more recent case where the defendants had, when pumping at a pumping station, polluted a stream by repeatedly pouring into it engine oil and grease during a period of three or four years prior to the date of the action, Lord ALVERSTONE, C.J., held that the plaintiffs could not recover damages for pollution caused more than six months before action brought (*English* v. *Metropolitan Water Board*, *supra*). It is difficult to reconcile this decision with the decision of BUCKLEY, J., in *Harrington* (*Earl of*) v. *Derby Corporation*, *supra*. The decision of BUCKLEY, J., in the last-mentioned case was followed in *Hague* v. *Doncaster R. D. C.* (1908), 73 J. P. 69.

In *Cree* v. *St. Pancras Vestry*, *ante*, it was held that the six months ran from the date of the expenditure of the money, because although it was not paid into their own hands and kept by them as in *Midland Rail. Co.* v. *Withington Local Board*, *ante*, yet it was paid in consequence of their request made in pursuance of the Act.

A man was, on February 11th, 1903, convicted by a metropolitan police magistrate for neglecting to have his children vaccinated, and the fines not being paid, the magistrate issued a distress warrant, under which the plaintiff's goods were distrained on April 17th. After quashing the conviction, the plaintiff, on August 26th, brought an action for damages for illegal distress, and it was held that the trespass to the plaintiff's goods by the distress was "the act complained of" and not the conviction, and that, therefore, the action was brought in time (*Polley* v. *Fordham* (No. 1), [1904] 2 K. B. 345). The decision in the last mentioned case should be compared with a more recent decision of BRAY, J. In *Turley* v. *Daw* (1906), 94 L. T. 216, his lordship held in an action against a high bailiff by a plaintiff who had been arrested under a committal order founded on a judgment summons never served upon him, that the six months ran not from the date of arrest, but from the date when the bailiff wrongly informed the court that he had duly served the summons.

A plaintiff alleged that a highway authority had pulled down a fence erected by him round a roadside waste, and claimed such waste. He asked for a declaration and an injunction against trespassing. It was held that the action was barred at the expiration of six months from the pulling down of the fence (*Offin* v. *Rochford R. D. C.*, [1906] 1 Ch. 342).

In an action for compensation awarded in respect of damage occasioned by the exercise of the powers of the Metropolis Management Acts, it was held to be no defence that the action was commenced more than six months after the damage was sustained, as s. 106 of the Metropolis Management Act, 1862, did not apply to such a claim, and still less to an action on an award made upon such a claim (*Delaney* v. *Metropolitan Board of Works* (1867), L. R. 3 C. P. 111). This case was followed by DAY, J., in *Moreton* v. *Alfreton* (unreported), May 6th, 1898).

The six months' limit under the provision in the text supersedes the twelve months provided for in Lord Campbell's Act, now called the Fatal Accidents Act, 1846 (9 & 10 Vict. c. 93), and it applies to actions brought under that Act (*Markey* v. *Tolworth Joint Isolation Hospital District Board*, [1900] 2 Q. B. 454). An action under that Act can only be maintained by the representative of a deceased person where that person could, if alive, have himself maintained an action in respect of his injuries against the local authority. A plaintiff's husband met with an accident owing to the negligence of the defendants in the execution of a public duty. In consequence of the injury then received he died two years afterwards without having brought an action against the defendants. Within six months after his death the plaintiff, as his personal representative, brought an action against the defendants; but it was held that it could not be maintained, inasmuch as the right of action of the deceased, if alive, would have been barred by s. 1 (a), *supra* (*Williams* v. *Mersey Docks and Harbour Board*, [1905] 1 K. B. 804; see also *Gawley* v. *Belfast Corporation*, [1908] 2 I. R. 34).

An action was brought against a local authority to recover expenses caused by extraordinary traffic on a highway, but it was not commenced within six

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months of the damage being done. By s. 12 (1) (b) of the Locomotives Act, 1898, proceedings for the recovery of expenses of extraordinary traffic are to be commenced within twelve months after the damage has been done; but it was held that the local authority was entitled to the Protection of the Act of 1893 (*Kent County Council* v. *Folkestone Corporation* (1904), 68 J. P. 590). The decision in this case was reversed on appeal on another ground; but so far as regards the point for which it is cited here it was approved. See *Kent County Council* v. *Folkestone Corporation*, [1905] 1 K. B. 620. *Cf.*, however, *Lanarkshire District Committee* v. *Airdrie Water Trustees* (1906), 8 F. 777.

Costs.

A judgment by consent is a judgment obtained within the meaning of s. 1 (b), and will carry costs as between solicitor and client unless it is otherwise agreed between the parties (*Shaw* v. *Hertfordshire County Council*, [1899] 2 Q. B. 282). *Cf. Aird* v. *Tarbert School Board* (1906), 44 S. L. R. 26, where Lord Pearson doubted whether the provision applied in a case where judgment is entered for the defendants by consent.

Notwithstanding the use of the word "shall" in s. 1 (b), there is power for good cause to deprive the defendants of costs under R. S. C., O. 65, r. 1 (*Bostock* v. *Ramsey U. D. C.*, [1900] 2 Q. B. 616; overruling on this point *Cree* v. *St. Pancras Vestry*, [1899] 1 Q. B. 693; and *Roberts* v. *Wrexham Corporation* (1897), 102 L. T. Newsp. 395). See also *Aird* v. *Tarbert School Board* (1906), 44 Sc. L. R. 223.

But otherwise no special direction is necessary for taxation as between solicitor and client, nor need the judgment show upon the face of it that the action was one falling within the Act (*North Metropolitan Tramways Co.* v. *London County Council*, [1898] 2 Ch. 145).

The Public Authorities Protection Act has not repealed s. 118 of the County Courts Act, 1888, so far as actions against public authorities are concerned, and, therefore, where an authority are successful defendants in county court proceedings, their costs must be taxed as between solicitor and client according to the county court scale (*Tory* v. *Dorchester Corporation*, [1907] 1 K. B. 393).

Where the plaintiff failed on one issue, but otherwise succeeded in the action, he was allowed his costs of the action as between party and party, but the defendants were allowed costs of the issue on which they succeeded as between solicitor and client, the two sets of costs to be set off one against the other (*Roberts* v. *Gwyrfai R. D. C.*, [1899] 1 Ch. 583).

In *Leckhampton Quarries Co., Ltd.* v. *Ballinger and the Cheltenham R. D. C.*, [1904] 68 J. P. 464, an action was brought claiming a declaration that plaintiffs' land was not subject to five alleged public rights of way, and the plaintiffs succeeded as to the most important, but failed as to the remaining four, which were much less important. The learned judge made an order giving the plaintiffs their general costs of the action, except so far as they had been increased by the issues upon which they had failed, and on those issues the defendants were given their costs as between solicitor and client. Upon a motion to vary the order (reported 69 J. P. 54), the defendants asked for the general costs of the action as between solicitor and client, except so far as they were increased by any issue upon which they had failed, and contended in support that whenever there are several causes of action combined in one action or proceeding, then if the defendants, being a public authority, succeed as to any one of those causes of action, the result of the statute is that they are entitled to the whole costs of the action except so far as increased by any matter on which they have failed. The learned judge, however, dismissed the motion on the ground that the plaintiffs had substantially succeeded in their action, and that therefore the case was brought within the ordinary rule that, when a plaintiff has substantially succeeded, he gets the general costs of the action except so far as they have been increased by any issues upon which he has failed. An appeal from this decision of the learned judge was dismissed (69 J. P. 377).

Tender of amends is no answer at common law to a claim for unliquidated damages, nor is the common law altered in this respect by the Judicature

Acts (*Davys* v. *Richardson* (1888), 21 Q. B. D. 202). Where a statute makes a tender of amends a sufficient answer to an action, it is not necessary for the defendant to pay the money into court unless the statute requires it in addition to the tender (*Jones* v. *Gooday* (1842), 9 M. & W. 736 : *per* Parke, B., at p. 745). On this principle it would seem that R. S. C., O. 22, r. 3, is not applicable to cases of plea of tender under this Act. It has been held that offer of compensation under s. 308 of the Public Health Act, 1875, where the defendant disputes the plaintiff's title, does not amount to a sufficient tender (*Cleckheaton U. D. C.* v. *Firth* (1898), 62 J. P. 536).

Sub-s. (c) of s. 1, has received interpretation in a recent case. In *Smith* v. *Northleach R. D. C.*, [1902] 1 Ch. 197, several issues were raised, and the defendants paid money into court in respect of one issue, with a denial of liability. Plaintiff proceeded with the action for some time afterwards, but ultimately accepted the sum paid into court in satisfaction of all the issues. The plaintiff recovered her costs of the one issue up to the date of payment into court, and the defendants obtained party and party costs of the other issues, and also costs of the one issue after the payment into court, the court holding that they were not entitled to solicitor and client costs from the date of payment in, inasmuch as s. 1 (c) of the Act is confined to cases in which an action is "proceeded with" to judgment, and does not apply to a discontinuance under O. 26, r. 1, where money is paid into court under O. 22, with denial of liability and not in satisfaction.

The discretion which the judge at the trial possesses of depriving a successful defendant of costs for good cause, in so far as s. 1 (b) is concerned, is apparently not exercisable so far as s. 1 (c) is concerned. See *per* Vaughan Williams, L.J., in *Bostock* v. *Ramsey U. D. C.*, [1900] 2 Q. B. 616, at p. 624.

Pleading statute.

The First Division of the Court of Session in Scotland allowed an amendment to be made (reserving the question of expenses) setting up a defence under the Public Authorities Protection Act, 1893, even after the Court of first instance had decided the case awarding damages against the public authority and the case was under appeal (*Clippens Oil Co., Ltd.* v. *Edinburgh and District Water Trustees* (1905), 42 S. L. R. 698; see also *Christie* v. *Glasgow Corporation* (1899), 36 S. L. R. 694).

A defence that the action was not brought within six months comes under the head of "Statutes of Limitation," in the County Court Rules, and notice must be given of such defence (*per* Judge Emden, at Bromley County Court, Jl. of G. L., November 10th, 1896, p. 912, in *Kirby* v. *Bromley Gas Consumers Co.*). See same case, at a later stage, Jl. of G. L., December 8th, 1896, p. 1140.

CONSPIRACY AND PROTECTION OF PROPERTY ACT, 1875.

(38 & 39 VICT. C. 86.)

An Act for amending the Law relating to Conspiracy, and to the Protection of Property, and for other purposes.

[13th August, 1875.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:

Short title.

1. This Act may be cited as the Conspiracy and Protection of Property Act, 1875.

Commencement of Act.

2. [*Repealed by Statute Law Revision* (*No.* 2) *Act*, 1893 (56 & 57 *Vict. c.* 54).]

* * * * *

CONSPIRACY AND PROTECTION OF PROPERTY.

Breach of contract by persons employed in supply of gas or water.

4. Where a person employed by a municipal authority or by any company or contractor upon whom is imposed by Act of Parliament the duty, or who have otherwise assumed the duty of supplying any city, borough, town, or place, or any part thereof, with gas or water, wilfully and maliciously breaks a contract of service with that authority or company or contractor, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to deprive the inhabitants of that city, borough, town, place, or part, wholly or to a great extent of their supply of gas or water, he shall on conviction thereof by a court of summary jurisdiction or on indictment as herein-after mentioned, be liable either to pay a penalty not exceeding twenty pounds or to be imprisoned for a term not exceeding three months, with or without hard labour.

Every such municipal authority, company, or contractor as is mentioned in this section shall cause to be posted up, at the gasworks or waterworks, as the case may be, belonging to such authority or company or contractor, a printed copy of this section in some conspicuous place where the same may be conveniently read by the persons employed, and as often as such copy becomes defaced, obliterated, or destroyed, shall cause it to be renewed with all reasonable despatch.

If any municipal authority or company or contractor make default in complying with the provisions of this section in relation to such notice as aforesaid, they or he shall incur on summary conviction a penalty not exceeding five pounds for every day during which such default continues, and every person who unlawfully injures, defaces, or covers up any notice so posted up as aforesaid in pursuance of this Act, shall be liable on summary conviction to a penalty not exceeding forty shillings.

Before this Act was passed, the following case arose. The servants of the Gaslight and Coke Company under a contract of service, being offended at the dismissal of a fellow servant, agreed together to quit the service of the company without notice, and in breach of their contracts of service, by reason of which the company was seriously impeded in the conduct of its business. Being indicted for a conspiracy, it was contended on behalf of the servants, that the Trade Union Act (34 & 35 Vict. c. 31) having determined that no act shall be illegal merely by reason of its being in restraint of trade, and having also defined the offence of obstructing or molesting, and otherwise determined what shall be deemed to be offences as between masters and servants, had virtually declared all other acts not to be punishable. It was held that the provisions of the statute had not affected the common law of conspiracy, for which an indictment would lie (*R.* v. *Bunn* (1872), 12 Cox, C. C. 316).

It is advisable that the contract of service referred to in this section should in all cases be in writing. See a paper by Mr. George Livesey, and suggested form of agreement, Jl. of G. L., May 18th, 1897, p. 1124.

Breach of contract involving injury to persons or property.

5. Where any person wilfully and maliciously breaks a contract of service or of hiring, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to endanger human life, or cause serious bodily injury, or to expose valuable property whether real or personal to destruction or serious injury, he shall on conviction thereof by a court of summary jurisdiction, or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour.

* * * * *

LEGAL PROCEEDINGS.

Power for offender under this Act to be tried on indictment.

9. Where a person is accused before a court of summary jurisdiction of any offence made punishable by this Act, and for which a penalty amounting to twenty pounds, or imprisonment, is imposed, the accused may, on appearing before the court of summary jurisdiction, declare that he objects to being tried for such offence by a court of summary jurisdiction, and thereupon the court of summary jurisdiction may deal with the case in all respects as if the accused were charged with an indictable offence and not an offence punishable on summary conviction, and the offence may be prosecuted on indictment accordingly.

Proceedings before court of summary jurisdiction.

10. Every offence under this Act which is made punishable on conviction by a court of summary jurisdiction or on summary conviction, and every penalty under this Act recoverable on summary conviction may be prosecuted and recovered in manner provided by the Summary Jurisdiction Act.

* * * * *

DEFINITIONS.

Definitions of "municipal authority" and "public company."

14. The expression "municipal authority" in this Act means any of the following authorities, that is to say, the metropolitan board of works, the common council of the city of London, the commissioners of sewers of the city of London, the town council of any borough for the time being subject to the Act of the session of the fifth and sixth years of the reign of king William the Fourth, chapter seventy-six, intituled "An Act to provide for the regulation of municipal corporations in England and Wales," and any Act amending the same; any commissioners, trustees, or other persons invested by any local Act of Parliament with powers of improving, cleansing, lighting, or paving any town; and any local board.

The duties of the Metropolitan Board of Works were transferred to the London County Council by the Local Government Act, 1888, s. 40 (8). By the City of London Sewers Act, 1897 (60 & 61 Vict. c. cxxxiii.), the Commissioners of Sewers of the City of London were dissolved and their duties were transferred to the Common Council of the city.

By the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 242 (3), it is provided that "where any Act passed before this Act, and not specified in the first or in the ninth schedule, refers to the Municipal Corporations Act, 1835, or any Act amending it, or to boroughs or corporations subject to that Act or any Act amending it, the reference shall be deemed to be to this Act, or to the corresponding provisions of this Act, or to boroughs or corporations subject to this Act, as the case may require."

Any municipal authority or company or contractor who has obtained authority by or in pursuance of any general or local Act of Parliament to supply the streets of any city, borough, town, or place, or of any part thereof, with gas, or which is required by or in pursuance of any general or local Act of Parliament to supply water on demand to the inhabitants of any city, borough, town, or place, or any part thereof, shall for the purposes of this Act be deemed to be a municipal authority or company or contractor upon whom is imposed by Act of Parliament the duty of supplying such city, borough, town, or place, or part thereof, with gas or water.

"Maliciously" in this Act construed as in Malicious Injuries to Property Act.

15. The word "maliciously" used in reference to any offence under this Act shall be construed in the same manner as it is required by the fifty-eighth section of the Act relating to malicious injuries to property, that is to say, the Act of the session of the twenty-fourth and twenty-fifth years of the reign of her present Majesty, chapter ninety-seven, to be construed in reference to any offence committed under such last-mentioned Act.

* * * * *

APPLICATION OF ACT TO SCOTLAND.

Application to Scotland.

18. This Act shall extend to Scotland, with the modifications following; that is to say,

Definitions.

(1.) The expression "municipal authority" means the town council of any royal or parliamentary burgh, or the commissioners of police

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of any burgh, town, or populous place under the provisions of the General Police and Improvement (Scotland) Act, 1862, or any local authority under the provisions of the Public Health (Scotland) Act, 1867 :

The Act of 1862 here mentioned was repealed by the Burgh Police (Scotland) Act, 1892 (55 & 56 Vict. c. 55) and has been superseded by that Act and the Burgh Police (Scotland) Act, 1903 (3 Edw. 7, c. 33); and the Act of 1867 has been repealed and superseded by the Public Health (Scotland) Act, 1897 (60 & 61 Vict. c. 38).

(2.) [*The expression "the Summary Jurisdiction Act" means the Summary Procedure Act,* 1864, *and any Acts amending the same* :]

(3.) The expression "the court of summary jurisdiction" means the sheriff of the county or any one of his substitutes.

The words in italics repealed by the Statute Law Revision Act (No. 2), 1893 (56 & 57 Vict. c. 54). See now Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 13 (6)—(11).

Recovery of penalties, etc., in Scotland.

19. In Scotland the following provisions shall have effect in regard to the prosecution of offences, recovery of penalties, and making of orders under this Act :

(1.) Every offence under this Act shall be prosecuted, every penalty recovered, and every order made at the instance of the Lord Advocate, or of the procurator fiscal of the sheriff court :

(2.) The proceedings may be on indictment in the Court of Justiciary [*in Edinburgh or on circuit*] or in a sheriff court, or may be taken summarily in the sheriff court under the provisions of the Summary Procedure Act, 1864 :

(3.) Every person found liable on conviction to pay any penalty under this Act shall be liable, in default of payment within a time to be fixed in the conviction, to be imprisoned for a term, to be also fixed therein, not exceeding two months, or until such penalty shall be sooner paid ; and the conviction and warrant may be in the form of No. 3 of Schedule K. of the Summary Procedure Act, 1864 :

(4.) In Scotland all penalties imposed in pursuance of this Act shall be paid to the clerk of the court imposing them, and shall by him be accounted for and paid to the Queen's and Lord Treasurer's Remembrancer, and be carried to the Consolidated Fund.

The words in italics repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54).

* * * * *

COMPANIES CLAUSES CONSOLIDATION ACT, 1845.

(8 & 9 VICT. c. 16.)

An Act for Consolidating in one Act certain Provisions usually inserted in Acts with respect to the Constitution of Companies incorporated for carrying on undertakings of a public nature.

[8th May, 1845.]

[*Preamble repealed by Statute Law Revision Act,* 1891.]

Act to apply to all companies incorporated by Acts hereafter to be passed.

[**1.**] This Act shall apply to every joint stock company which shall by any Act which shall hereafter be passed be incorporated for the purpose of carrying on any undertaking, and this Act shall be incorporated with such Act; and all the clauses and provisions of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the company which shall be incorporated by such Act, and to the undertaking for carrying on which such company shall be incorporated, so far as the same shall be applicable thereto respectively; and such clauses and provisions, as well as the clauses and provisions of every other Act which shall be incorporated with such Act, shall, save as aforesaid, form part of such Act, and be construed together therewith as forming one Act.

By the Short Titles Act, 1896 (59 & 60 Vict. c. 14), this Act and the other Companies Clauses Acts passed respectively in 1863, 1869, 1888, and 1889, may collectively be cited as "The Companies Clauses Acts, 1845 to 1889."

Interpretations in this Act.

2. And with respect to the construction of this Act, and of other Acts to be incorporated therewith, be it enacted as follows:

"The special Act."

The expression "the special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed incorporating a joint stock company for the purpose of carrying on any undertaking, and with which this Act shall be so incorporated as aforesaid; and the word "prescribed" used in this Act, in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act; and the sentence in which such word shall occur shall be construed as if instead of the word "prescribed" the expression "prescribed for that purpose in the special Act" had been used; and the expression "the undertaking" shall mean the undertaking or works, of whatever nature, which shall by the special Act be authorised to be executed.

"Prescribed."

"The undertaking."

Interpretations in this and the special Act.

3. The following words and expressions both in this and the special Act shall have the several meanings hereby assigned to them, unless there be something in the subject or the context repugnant to such construction; (that is to say),

Number.

Words importing the singular number only shall include the plural number; and words importing the plural number only shall include the singular number:

Words importing the masculine gender only shall include females : Gender.

The word "lands" shall extend to messuages, lands, tenements, and hereditaments of any tenure : "Lands."

The word "lease" shall include an agreement for a lease : "Lease."

The word "month" shall mean calendar month : "Month."

The expression "superior courts" shall mean her Majesty's superior courts of record at Westminster or Dublin, as the case may require : "Superior courts."

The word "oath" shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath : "Oath."

The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town : "County."

The word "justice" shall mean justice of the peace acting for the county, city, burgh, liberty, cinque port, or other place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter ; and where any matter shall be authorised or required to be done by two justices the expression "two justices" shall be understood to mean two justices assembled and acting together in petty sessions : "Justice." "Two justices."

The definition is similar to that contained in the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), s. 3, and it has been decided in a case under the latter Act that the words "who shall not be interested in the matter" are merely declaratory of the common law, and does not confine the jurisdiction given by different sections of the Act to a justice not being interested; and therefore where on the hearing of a complaint an objection to a justice on the ground of interest is waived by the parties, the justice has jurisdiction, and the objection of want of jurisdiction cannot afterwards be raised (*Wakefield L. B.* v. *West Riding Rail. Co.* (1865), L. R. 1 Q. B. 84).

As to when justices are disqualified by interest, bias, or otherwise, see *ante*, p. 160.

The expression "the company" shall mean the company constituted by the special Act : "The company."

The expression "the directors" shall mean the directors of the company, and shall include all persons having the direction of the undertaking, whether under the name of directors, managers, committee of management, or under any other name : "Directors."

The word "shareholder" shall mean shareholder, proprietor, or member of the company ; and in referring to any such shareholder, expressions properly applicable to a person shall be held to apply to a corporation ; and "Shareholder."

The expression "secretary" shall mean the secretary of the company, and shall include the word "clerk." "Secretary."

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Short title of the Act."

4. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression "The Companies Clauses Consolidation Act, 1845."

Certain words omitted are repealed by the Statute Law Revision Act, 1891 (54 & 55 Vict. c. 67).

Form in which portions of this Act may be incorporated with other Acts.

5. And whereas it may be convenient in some cases to incorporate with Acts of Parliament hereafter to be passed some portions only of the provisions of this Act: Be it therefore enacted, that for the purpose of making any such incorporation it shall be sufficient in any such Act to enact that the clauses and provisions of this Act, with respect to the matter so proposed to be incorporated (describing such matter as it is described in this Act in the words introductory to the enactment with respect to such matter) shall be incorporated with such Act; and thereupon all the clauses and provisions of this Act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such Act shall relate.

DISTRIBUTION OF CAPITAL.

And with respect to the distribution of the capital of the company into shares, be it enacted as follows:

In this and similar Acts where a number of sections are headed with words like these, the effect is the same as if the heading had been repeated at the head of each section (*Eastern Counties, etc. Companies* v. *Marriage* (1860), 9 H. L. C. 32, 69).

Capital to be divided into shares.

6. The capital of the company shall be divided into shares of the prescribed number and amount; and such shares shall be numbered in arithmetical progression, beginning with number one; and every such share shall be distinguished by its appropriate number.

It is not competent for a company by resolution to create preference shares, or to guarantee a dividend upon any portion of the share capital, unless this is provided for in the special Act (*Sturge* v. *Eastern Union Rail. Co.* (1855), 7 De G. M. & G. 158, 175). As to the mode of raising additional capital where authorised, and of issuing preference shares or stock where authorised, see Companies Clauses Act, 1863, Part II., *post*, p. 1144.

According to the present practice of Parliament, it is not usual to allow gas or water companies to divide their capitals into shares of a less value than £10 each.

A company incorporated by Act of Parliament being already in possession of works constructed by means of capital raised by the issue of shares obtained by a later Act power to raise more capital for the construction of additional works. These works were of a peculiar kind, and could not be constructed by means of contracts taken in the usual way, but required that the company should find the plant and employ workmen to act as directed by their engineer. The capital for the works was raised by the exercise of borrowing powers and by preference shares, the holders of which had certain options to convert them into ordinary shares:—*Held*, that the company were entitled to add to the capital required for the construction of the works the amount of the interest or dividends on the loans or shares by means of which it was raised until the completion of the works (*Bardwell* v. *Sheffield Waterworks Co.* (1872), L. R. 14 Eq. 517). *Cf. In re Alexandra Palace Co.* (1882), 21 Ch. D. 149, and *In re Sharpe*, [1892] 1 Ch. 154.

Shares to be personal estate.

7. All shares in the undertaking shall be personal estate, and transmissible as such, and shall not be of the nature of real estate.

For the purposes of the Mortmain Act, s. 4 of the Statute of Frauds, and other Acts, it was formerly a much litigated question whether the shares of gas and water companies, and of incorporated companies generally, were real or personal estate. Sometimes the shares were declared by the Act, charter, or deed, to be personal estate. In *Ware* v. *Cumberlege* (1855), 20 Beav. 503, it had been held that shares in the Grand Junction Waterworks Company were real estate, but this case was overruled in *Edwards* v. *Hall* (1855), 6 De G. M. & G. 74, and see *Attree* v. *Hawe* (1878), 9 Ch. D. 337, overruling *Ashton* v. *Lord Langdale* (1851), 4 De G. & Sm. 402, and (as to gas companies) see *Sparling* v. *Parker* (1846), 9 Beav. 450. The numerous cases in this connection relating to land, dock, railway, canal and other companies, will be found collected in Lindley's Law of Companies, 5th ed. 452—3. See further the notes to Gasworks Clauses Act, 1847, s. 3, *ante*, p. 162.

Shareholders.

8. Every person who shall have subscribed the prescribed sum or upwards to the capital of the company, or shall otherwise have become entitled to a share in the company, and whose name shall have been entered on the register of shareholders hereinafter mentioned, shall be deemed a shareholder of the company.

A railway Act, by a very usual clause, after naming certain persons, enacted that they and "all other persons who have already subscribed or shall hereafter subscribe to the undertaking, are by this Act united into a company . . ." Prior to the passing of the Act the defendants had signed a document, whereby they agreed, on the passing of the Act, to subscribe for fifty shares of £10 each. After the passing of the Act an allotment of shares was made to the defendants, but no notice was given to them. The defendants' names were placed on the register for fifty specific shares, but no notice was given to them. The company having suspended operations and calls having been made, the defendants repudiated all liability as shareholders:—*Held*, that under the agreement defendants were "subscribers" to the undertaking, and therefore had been rightly put on the register, and were "shareholders," within s. 8, and liable to pay the calls (*Burke* v. *Lechmere* (1871), L. R. 6 Q. B. 297). In another case where the Act contained a similar clause, provision was made for dividing the capital into £10 shares, and for the qualification of a director being thirty shares. The Act then enacted that the defendant and certain other persons were to be the first directors of the company, and were to continue in office until the first ordinary meeting of the company. No ordinary meeting of the company ever was held, nor any meeting of directors, nor any general meeting of shareholders. No register of shareholders ever was made, nor were shares ever allotted. The court of appeal held that the defendant and the other persons named as directors by the Act were each shareholders to the extent of thirty shares, notwithstanding that no register of shareholders had ever been created (*Portal* v. *Emmens* (1876), 1 C. P. D. 664). See also *Kipling* v. *Todd* and *Mammatt* v. *Brett*, both cited under s. 36, *post*, p. 1098. So, where before the incorporation of a company by Act of Parliament, the defendant agreed to take shares and executed a subscriber's agreement and received and sold scrip certificates, it was held that his name was rightly placed on the register after the Act passed, and that he was a shareholder (*Midland Great Western Rail. Co.* v. *Gordon* (1847), 16 M. & W. 804; and see *Waterford, etc., Rail. Co.* v. *Pidcock* (1853), 8 Ex. 279; and *Re Great Cambrian Mining, etc. Co., Richardson's Case* (1856), 4 W. R. 670).

By a private Act, which incorporated the Act of 1845, it was enacted that F. and certain other persons named, and all other persons who had already subscribed, or should thereafter subscribe, to the undertaking, should be united into a company for the purposes therein mentioned; that the number of directors should be six; that the qualification of a director should be the

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possession in his own right of fifty shares; that F. and certain other persons should be the first directors of the company, and should continue in office until the first ordinary meeting; and that at that meeting the shareholders might either continue in office the directors appointed by the Act, or any of them, or might elect a new body of directors, or directors to supply the place of those not continued in office, the directors appointed by the Act being, if qualified, eligible for re-election. F. acted as a director until the first ordinary meeting, which was held in April, 1867. At that meeting he retired from office, and never afterwards had anything to do with the company. He never applied for any shares, nor were any ever allotted to him, nor was he ever placed on the register of shareholders. In May, 1874, the company was ordered to be wound up:—*Held*, that F. must be settled on the list of contributories for fifty shares (*In re Teme Valley Rail. Co., Forbes' Case* (1875), L. R. 19 Eq. 353). *Cf. Forbes' Case* (1873), L. R. 8 Ch. 768; *Isaac's Case*, [1892] 2 Ch. 158; *Hutchinson's Case*, [1895] 1 Ch. 226; *Salton* v. *New Beeston Cycle Co.*, [1889] 1 Ch. 755; and *Molineaux* v. *The London, Birmingham and Manchester Insurance Co., Ltd.*, [1902] 2 K. B. 589.

Withdrawal of an application for shares may be made orally before notice of allotment is given (*In re Brewery Assets Corporation, Truman's Case*, [1894] 3 Ch. 272). See also *Wilson's Case* (1869), 20 L. T. (N.S.) 962; and *cf. Pennell* v. *Stephens* (1849), 7 C. B. 987.

Sect. 8 was held to be complied with, although the register did not show the distinguishing number of the defendant's shares, it being proved *aliunde* that the shares were in fact numbered (*East Gloucestershire Rail Co.* v. *Bartholomew* (1867), L. R. 3 Ex. 15). Where a railway company's special Act provided, "That the company should not *issue* any shares created under the authority of this Act, nor should any share *vest* in the person accepting the same, until one-fifth of the amount of the share was paid up":—*Held*, that the word "issue" referred to the issuing of certificates of shares, and that the word "vest" referred to the vesting of shares so as to be property and capable of transfer; but that the section did not make the payment of one-fifth a condition precedent to the liability as a shareholder of the person accepting the share (*ib.*). This case was followed in *McEuen* v. *West London Wharves Co.* (1871), L. R. 6 Ch. 655.

If two companies amalgamate, with full authorisation of a general meeting in accordance with the deed of association, a dissentient shareholder cannot be compelled to become a shareholder in the new company with more extended objects, nor (*semble*) in any new company at all (*In re Empire Assurance Corporation* (1867), L. R. 4 Eq. 341).

For a case under the Companies Act, 1862, in which the shares in a company were taken by a vendor and members of his family, and in which the House of Lords held that the company had been duly formed and registered, see *Salomon* v. *Salomon*, [1897] A. C. 22.

Trustee Act, 1893.

The Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 1, prescribes the manner in which trustees may invest the trust funds. The following, relating to water and to municipal corporations, are included in that section:

(l.) In the debenture or guaranteed or preference stock of any company in Great Britain or Ireland, established for the supply of water for profit, and incorporated by special Act of Parliament or by royal charter, and having during each of the ten years last past before the date of investment paid a dividend of not less than five pounds per centum on its ordinary stock. [By 2 Edw. 7, c. 41, s. 17 (4), water stock created under that Act is included amongst securities in which a trustee may invest.]

(m.) In nominal or inscribed stock issued, or to be issued, by the corporation of any municipal borough having, according to the returns of the last census prior to the date of investment, a population exceeding fifty thousand, or by any county council, under the authority of any Act of Parliament or provisional order. [The census returns for 1901 gave the population of the borough of B. as 47,003. A note at the foot of the page stated that, since the date of the actual census, the borough had been extended so as to include some extra parishes, adding: "The figures at the date of the census were as follows—Bournemouth, C. B. 59,762." It was held that B. was a borough "having, according to the returns of the last census," a population exceeding 50,000 (*In re Druitt, Druitt* v. *Dehler*, [1903] 1 Ch. 446).]

(n.) In nominal or inscribed stock issued or to be issued by any commissioners incorporated by Act of Parliament for the purpose of supplying water and having a compulsory power of levying rates over an area having, according to the returns of the last census prior to the date of investment, a population exceeding fifty thousand, provided that during each of the ten years last past before the date of investment the rates levied by such commissioners shall not have exceeded eighty per centum of the amount authorised by law to be levied.

Where by a will made in 1895 trustees were empowered to invest in the bonds, debentures, or debenture stock of any "company incorporated by Act of Parliament":—*Held*, that the trustees were not authorised to invest in securities of companies incorporated by registration under the Companies Act, 1862 (*In re Smith, Davidson* v. *Myrtle*, [1896] 2 Ch. 590). *Cf. Elve* v. *Boyton*, [1891] 1 Ch. 501. See the Colonial Stock Act, 1900 (63 & 64 Vict. c. 62), s. 2, extending the Act of 1893 to colonial stocks to the extent therein provided.

Registry of shareholders.

9. The company shall keep a book, to be called the "register of shareholders"; and in such book shall be fairly and distinctly entered, from time to time, the names of the several corporations, and the names and additions of the several persons entitled to shares in the company, together with the number of shares to which such shareholders shall be respectively entitled, distinguishing each share by its number, and the amount of the subscriptions paid on such shares, and the surnames or corporate names of the said shareholders shall be placed in alphabetical order; and such book shall be authenticated by the common seal of the company being affixed thereto; and such authentication shall take place at the first ordinary meeting, or at the next subsequent meeting of the company, and so from time to time at each ordinary meeting of the company.

Cf. the provisions of s. 28 of the Companies Clauses Act, 1863, at p. 1151 *post*.

All these provisions have been held to be merely directory. See *East Gloucestershire Rail. Co.* v. *Bartholomew* (1867), L. R. 3 Ex. 15, where all the cases are reviewed. See also *Bain* v. *Whitehaven and Furness Rail Co.* (1850), 3 H. L. Cas. 1, and notes to preceding section.

A shareholder continues in that capacity until his shares are transferred and duly registered (*Corden* v. *Universal Gaslight Co.* (1848), 6 D. & L. 379).

In *Wolverhampton New Waterworks Co.* v. *Hawkesford* (1861), 11 C. B. (N.S.) 456, it was decided that in order to be a shareholder within the meaning of s. 27 it is not necessary that the name of the holder of the shares should be on a register of shareholders sealed at an ordinary meeting of the company; but there must be a register whether properly sealed or not, with the name of such holder inserted therein as the holder of shares numbered and specifically appropriated to him; and a sheet of paper containing a list of names and sealed as a register of shareholders but not having any of these essentials is not a register within the meaning of the statute and is therefore no evidence of proprietorship. It was further decided in that case that the time within which a register of shareholders is directed by s. 9 to be made,

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is not an essential condition, and, therefore, a register made after that time may be valid. *Cf. Portal* v. *Emmens*, *supra*, p. 1081.

NOTE.

Shares were allotted to B. and T. and another as trustees, and their names were entered on the alphabetical list of shareholders pursuant to s. 9, but the sealed register described the holders of the shares to be "B. and others." The secretary notified to B. the allotment of the shares and B. wrote in reply accepting them:—*Held*, that the sealed register is by s. 28 made *primâ facie* evidence only of a party being a shareholder; that here it was no evidence against T. who was not individually named in it, and that there was no proof that T. had agreed to accept the shares allotted to him and his co-trustees (*Birkenhead, Lancashire, etc. Rail. Co.* v. *Brownrigg* 1849), 4 Ex. 426; and see *Waterford, etc. Rail. Co.* v. *Pidcock* (1853), 8 Ex. 279).

By the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 46 (2), it is *inter alia* provided that a person shall not be disqualified for being elected a member or chairman of a council of a parish, or of a district other than a borough, or of a board of guardians, by reason of being interested in any contract with the council or board as a shareholder in any joint stock company; but he shall not vote at any meeting of the council or board on any question in which such company are interested, except that in the case of a water company or other company established for the carrying on of works of a like public nature, this prohibition may be dispensed with by the county council. As to boroughs, see the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 12.

Addresses of shareholders.

10. In addition to the said register of shareholders, the company shall provide a book, to be called the "shareholders' address book," in which the secretary shall from time to time enter in alphabetical order the corporate names and places of business of the several shareholders of the company, being corporations, and the surnames of the several other shareholders, with their respective christian names, places of abode and descriptions, so far as the same shall be known to the company; and every shareholder, or if such shareholder be a corporation the clerk or agent of such corporation, may at all convenient times peruse such book gratis, and may require a copy thereof or of any part thereof; and for every hundred words so required to be copied the company may demand a sum not exceeding sixpence.

The right conferred upon a shareholder by this section to have supplied to him a copy of the shareholders' address book is a private right incidental to his property, and is a right for the enforcement of which an action for *mandamus* under s. 25 (8) of the Judicature Act, 1873, and Ord. LIII. lies; and in such an action the Court is not bound by the rules which govern the Court of King's Bench in an application for the prerogative writ of *mandamus*, and it has no option to refuse to grant a *mandamus* or mandatory injunction on the ground that the motives of the plaintiff in asking for it are improper; and consequently any evidence as to the motives of the plaintiff is in such an action irrelevant and inadmissible (*Davies* v. *Gaslight and Coke Co.*, [1909] 1 Ch. 708).

As regards railway companies, see the Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), s. 34.

Certificates of shares to be issued to the shareholders.

11. On demand of the holder of any share the company shall cause a certificate of the proprietorship of such share to be delivered to such shareholder; and such certificate shall have the common seal of the company affixed thereto; and such certificate shall specify the share in the undertaking to which such shareholder is entitled; and the same may be according to the form in the Schedule (A.) to this Act annexed,

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or to the like effect; and for such certificate the company may demand any sum not exceeding the prescribed amount, or if no amount be prescribed, then a sum not exceeding two shillings and sixpence.

Certificates are mere indicia of the property; they are not goods, or goods and merchandise, either within the Factors or Stamp Acts (*Freeman* v. *Appleyard* (1862), 32 L. J. Ex. 175; *Knight* v. *Barber* (1846), 16 M. & W. 66). See *Colonial Bank* v. *Whinney*, *post*, p. 1086.

These certificates, whether of home or foreign companies, may be the subject of larceny (*R.* v. *Smith* (1855), 7 Cox, C. C. 93, and 24 & 25 Vict. c. 96, s. 1).

Certificate to be evidence.

12. The said certificate shall be admitted in all courts as primâ facie evidence of the title of such shareholder, his executors, administrators, successors, or assigns, to the share therein specified; nevertheless the want of such certificate shall not prevent the holder of any share from disposing thereof.

Transfers in blank.

Generally speaking, transfers in blank are of no effect either in law or equity. If the property is not mentioned no property passes, and if the transferee's name is not mentioned the transferor is not divested (*Hibblewhite* v. *McMorine* (1840), 6 M. & W. 200; *Swan* v. *North British Australasian Co.* (1853), 2 H. & C. 175; *Morris* v. *Cannan* (1862), 4 De G. F. & J. 581; *Tayler* v. *Great Indian Peninsula Rail. Co.* (1859), 4 De G. & J. 559). As to the effect in equity of a transfer in blank, see further *Morris* v. *Cannan*, *supra*.

Where a transfer was executed by the seller with a blank for the purchaser's name, and the consideration was untruly stated, but the purchaser afterwards signed and transmitted to the company a proxy paper, describing himself as the proprietor of the shares:—*Held*, in an action by the company against him for calls, that he was precluded from disputing the validity of the transfer (*Sheffield, Ashton-under-Lyne, and Manchester Rail. Co.* v. *Woodcock* (1841), 7 M. & W. 574).

The registered holder of shares in a company deposited the certificates accompanied by a transfer executed by himself, but with the name of the transferee and of the date of execution left in blank, with a person who advanced him money, as a security for the loan. No time was fixed for the repayment of the loan, and nothing was said as to the object of the transfer:—*Held*, that the depositee had no authority, without a previous demand for repayment of the loan, to sell or sub-mortgage the shares and fill in the name of the purchaser or sub-mortgagee as transferee (*France* v. *Clark* (1883), 22 Ch. D. 830). See *Harrold* v. *Plenty*, [1901] 2 Ch. 314.

As to the effect of a share certificate under s. 31 of the Companies Act, 1862 (now replaced by s. 23 of the Companies Consolidation Act, 1908), see *Longman* v. *Bath Electric Tramways, Ltd.*, [1905] 1 Ch. 646.

Equitable mortgages of shares.

A certificate of shares is merely a solemn affirmation under the seal of the company that a certain amount of stock stands in the name of the individual mentioned in the certificate. It is therefore the duty of a person receiving, on an equitable mortgage of stock, the certificates thereof, to inquire what is the real position of the person pretending to mortgage it, for if such person has only the legal title by having the certificates in his possession, but is, in truth, merely the trustee for another, the equitable mortgagee will be unable to enforce his claim in opposition to the original *cestui que trust* (*Shropshire Union, etc., Co.* v. *R.* (1875), L. R. 7 H. L. 496). See further *Keate* v. *Phillips* (1881), 18 Ch. D. 560, and *Harpham* v. *Shacklock* (1881), 19 Ch. D. 207. See as to priorities amongst holders of equitable interests, *Société Générale de Paris* v. *Walker* (1885), 11 App. Cas. 20; *Carritt* v. *Real and Personal Advance Co.* (1889), 42 Ch. D. 263; *In re Richards* (1890), 45 Ch. D. 589; *Taylor* v. *Russell*, [1891] 1 Ch. 8; *Ireland* v. *Hart*, [1902] 1 Ch. 522.

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NOTE.

The sole executor and residuary legatee of the surviving trustee of a marriage settlement was the registered holder of a sum of stock of a company regulated by the Act of 1845, which was part of the trust fund. He deposited with a bank, as security for an advance, the stock certificate, a loan note undertaking to execute a proper assignment when required, and a blank transfer executed by himself. This transfer was not stamped and was expressed to be in consideration of 5*s*. The bank, who had no notice of the trust, subsequently inserted their own name in the blank transfer and executed it; but the deed was not re-delivered by the borrower, nor executed in his presence, nor by his authority under seal. The transfer was duly registered by the company, of which the bank informed the borrower:—*Held*, by the Court of Appeal, that the transfer was not the deed of the borrower and did not pass the legal title to the stock; and, therefore, although the bank were not affected with notice of the breach of trust, their title must be postponed to the prior equitable title of the persons interested under the trust. *Semble*, the fact that the blank transfer was not stamped and did not state the true consideration would not in itself have invalidated the deed, the provisions on that subject in the Act being merely directory (*Powell* v. *London and Provincial Bank*, [1893] 2 Ch. 555).

A registered shareholder deposited with his bank certain share certificates together with a blank transfer executed by him, as security for advances Upon each certificate was a note that in the event of sale or transmission the certificate must be surrendered with the deed of transfer before the transfer could be registered, or a new certificate issued. The shareholder became bankrupt before the company received any notice of the deposit. It was held by the House of Lords that shares were "things in action" within the meaning of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 44 (iii.), as to reputed ownership, but that, having regard to the note upon the certificate, the shares were not in the possession, order, or disposition of the shareholder under such circumstances that he was the reputed owner thereof (*Colonial Bank* v. *Whinney* (1886), 11 App. Cas. 426).

Certificate to be renewed when destroyed.

13. If any such certificate be worn or damaged, then, upon the same being produced at some meeting of the directors, such directors may order the same to be cancelled, and thereupon another similar certificate shall be given to the party in whom the property of such certificate, and of the share therein mentioned, shall be at the time vested; or if such certificate be lost or destroyed, then, upon proof thereof to the satisfaction of the directors, a similar certificate shall be given to the party entitled to the certificate so lost or destroyed; and in either case a due entry of the substituted certificate shall be made by the secretary in the register of shareholders; and for every such certificate so given or exchanged the company may demand any sum not exceeding the prescribed amount, or if no amount be prescribed, then a sum not exceeding two shillings and sixpence.

And with respect to the transfer or transmission of shares, be it enacted as follows:

Transfer of shares to be by deed duly stamped.

14. Subject to the regulations herein or in the special Act contained, every shareholder may sell and transfer all or any of his shares in the undertaking, or all or any part of his interest in the capital stock of the company, in case such shares shall, under the provision hereinafter contained, be consolidated into capital stock; and every such transfer shall be by deed duly stamped, in which the consideration shall be truly stated; and such deed may be according to the form in the Schedule (B.) to this Act annexed, or to the like effect.

Note.

Where a company has power to issue legally transferable securities an irregularity in the issue cannot be set up against even the original holder, if he has a right to presume *omnia ritè acta* (*Re Romford Canal Co.* (1883), 24 Ch. D. 85; *Fountaine* v. *Carmarthen Rail. Co.* (1868), L. R. 5 Eq. 316).

As to the difference between transfer and transmission, see ss. 18, 19; and *Copeland* v. *North Eastern Rail. Co.* (1856), 6 E. & B. 277.

The stamp duty upon transfer is regulated by the Stamp Act, 1891 (54 & 55 Vict. c. 39), and is calculated at the rate of ten shillings per cent.

Transfers of shares to be registered, etc.

15. The said deed of transfer (when duly executed) shall be delivered to the secretary, and be kept by him; and the secretary shall enter a memorial thereof in a book to be called the "register of transfers," and shall endorse such entry on the deed of transfer, and shall, on demand, deliver a new certificate to the purchaser; and for every such entry, together with such endorsement and certificate, the company may demand any sum not exceeding the prescribed amount, or if no amount be prescribed, then a sum not exceeding two shillings and sixpence; and on the request of the purchaser of any share an endorsement of such transfer shall be made on the certificate of such share, instead of a new certificate being granted; and such endorsement, being signed by the secretary, shall be considered in every respect the same as a new certificate; and until such transfer has been so delivered to the secretary as aforesaid the vendor of the share shall continue liable to the company for any calls that may be made upon such share, and the purchaser of the share shall not be entitled to receive any share of the profits of the undertaking, or to vote in respect of such share.

Obligation on company to register transfers.

The company are bound to register transfers, and an action for *mandamus* under the Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25 (8), will lie to compel the company to do so at the instance of any *bonâ fide* holder of shares. See *Ward* v. *S. E. Rail. Co.* (1860), 2 E. & E. 812.

A shareholder in a railway company made a real and absolute transfer of his shares for a nominal consideration to an insolvent person in order to avoid liability for future calls. The company refused to register the transfer. A rule *nisi* for a prerogative writ of *mandamus* to compel the company to register the transfer having been granted:—*Held*, that inasmuch as the prosecutor had another specific and sufficient remedy, viz., by action of *mandamus*, the prerogative writ ought not to issue, and the rule must be discharged (*R.* v. *Lambourn Valley Rail. Co.* (1888), 22 Q. B. D. 463). The court will not refuse to grant a prerogative writ of *mandamus* in every case in which an action for *mandamus* will lie (*R.* v. *L. & N. W. Rail. Co.*, [1894] 2 Q. B. 512).

The directors of a company have no discretionary power (independently of powers expressly given to them by the articles of association) to refuse to register a transfer which has been *bonâ fide* made. Therefore, where a transferee gave an address at which he was only an occasional visitor, it was held (reversing the decision of the Master of the Rolls) that the directors were bound to register the transfer, although the company was at the time in difficulties, and the shares were sold by the transferor in order to get rid of his responsibility (*In re Smith, Knight & Co., Weston's Case* (1868), L. R. 4 Ch. 20). And in a case under the Companies Act, 1862 (25 & 26 Vict. c. 89), where a transfer was made to a pauper in order to escape further liability, and the directors refused to register the transfer, Rolt, L.J., expressed the opinion that such a transfer was not necessarily vitiated, but held that by his conduct the transferor had disentitled himself to have the register altered under s. 35 of the Act of 1862, by taking off his name and putting on that of the transferee (*In re National and Provincial Marine*

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Insurance Co., Ex parte Parker (1867), L. R. 2 Ch. 685); and in the Irish courts, in the case of *R.* v. *Midland Counties Rail. Co.* (1862), 15 Ir. C. L. 525, *mandamus* was granted to compel the registration of a transfer to a pauper to escape further liability. In *R.* v. *Midland Counties Rail. Co.* (1862), 15 Ir. C. L. 514, *mandamus* to compel registration of a transfer to an infant was refused. Where the transfer is fraudulently made, registration of the transfer will not be compelled (*In re South London Fish Market Co.* (1888), 39 Ch. D. 324). See *In re The Discoverers Finance Corporation* (1910), Times, February 14th, when the authorities upon this subject were reviewed and classified.

Several shareholders, entitled each to different shares, may join in one deed of transfer, provided the *ad valorem* stamp is sufficient (*Wills* v. *Bridge* (1849), 4 Ex. 193).

Under s. 4 of the Married Women's Property Act, 1870 (33 & 34 Vict. c. 93), it was decided, on an application by a married woman to a joint stock or incorporated company to register stock in her name as a "married woman entitled to her separate use," that the company must investigate the title, and if they refuse to register, the court, unless a flaw in the title be shown, will compel them by *mandamus* to register (*R.* v. *Carnatic Rail. Co.* (1873), L. R. 8 Q. B. 299). See now the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), ss. 7—9.

A transfer to the plaintiff of shares in the defendant company was presented for registration. The stamp on the transfer was in accordance with the consideration stated on the face of it, but it was discovered that the consideration so stated was less than that which had been given. The directors thereupon refused to register the transfer. In an action to recover damages arising out of this refusal:—*Held*, that since a transfer not duly stamped according to law would not, by reason of s. 14, sub-s. 4 of the Stamp Act, 1891, be available in a court of law either to enforce rights of the company against the transferee, or to justify an alteration of the register of shareholders, the directors were entitled to refuse to register the transfer, and that in determining whether the transfer was duly stamped they were entitled to go behind that which appeared on the face of the document (*Maynard* v. *The Consolidated Kent Collieries Corporation, Ltd.*, [1903] 2 K. B. 121.

Non-registration of transfer; incomplete transfer, effect of.

A contract for the sale of shares in a registered company was made through brokers upon and subject to the rules of the Stock Exchange. In accordance with the practice of the Stock Exchange, the transferee of the shares paid the price of them to the vendor upon delivery to him of a duly executed transfer. An application for registration of the transfer being subsequently made to the directors of the company, who were empowered by the articles of association in their discretion to decline to register a person claiming by transfer of shares, they refused to register the transferee as a member of the company. The transferee thereupon brought an action to recover back the price of the shares from the vendor as money had and received to his use:—*Held*, following *Stray* v. *Russell* (1859), 1 E. & E. 888, 917, that the contract for the sale of shares on the Stock Exchange did not import an undertaking by the vendor that the company would register the transferee, and that the action was not maintainable (*London Founders' Association, Ltd.* v. *Clarke* (1888), 20 Q. B. D. 576). The case is altered where the sale note contains the words "negotiation guaranteed" (*Cruse* v. *Paine* (1869), L. R. 4 Ch. 441).

A deed of transfer of shares or stock under the Act of 1845 does not pass the legal interest to the transferee until it has been delivered to the secretary of the company. If he returns it because it does not comply with the requisitions of the Act, it is to be considered as not delivered to him. Trustees who held railway stock in trust for H. B. absolutely, executed a deed of transfer to him, and delivered it to the secretary of the company, who returned it because it was not properly stamped and dated. After this, H. B. made a voluntary setttlement purporting to include this stock. Several years afterwards the defects in the deed of transfer were supplied, and it was delivered to the secretary, who received it and registered the stock in H. B.'s name:—*Held*, that at the time of the execution of the voluntary settlement, the stock was not legally vested in H. B., but that he was only equitable owner; that the voluntary settlement of it was, therefore, effectual; and that H. B.'s representative was bound to transfer the stock to the trustees of the voluntary settlement (*Nanney* v. *Morgan* (1887), 37 Ch. D. 346). *Cf.* the Voluntary Conveyances Act, 1893 (56 & 57 Vict. c. 21).

Production of certificates on transfer, etc.

In the case of companies formed with limited liability under the Companies Act, 1862, and amending Acts, it is usual to provide in the articles of association for production and surrender of certificates of shares, upon transfer, and very wide powers are conferred upon the company in this way, and a note is commonly put upon certificates stating the requirements of the company in this respect. In the case of companies governed by the Companies Clauses Act, 1845, a practice has grown up of putting a note at the end of the certificate to the effect that transfers will not be registered unless on production of the certificate. This practice has been regarded as lawful by the House of Lords in *Shropshire Union Rail. and Canal Co.* v. *R.* (1875), L. R. 7 H. L. 496 (see at p. 498); and *Colonial Bank* v. *Whinney* (1886), 11 App. Cas. 426. In the latter case the note required production not only on transfer but on transmission. See *post*, ss. 18, 19, and *cf.*, the last part of ss. 12 and 13 regarding lost or destroyed certificates and s. 15 in regard to endorsement of transfer on certificate. See further, *Rainsford* v. *Jas. Keith and Blackman Co., Ltd.*, [1905] 2 Ch. 147.

Forged transfers.

If a shareholder's name is forged to a transfer the transferee takes no property, and the true owner is entitled to have the shares or stock re-transferred to his name (*Midland Rail. Co.* v. *Taylor* (1862), 8 H. L. Cas. 751). One of two executors cannot make a valid transfer of railway shares or stock registered in the names of both, under and subject to the provisions of the Companies Clauses Act, 1845. Railway stock was registered in the names of two persons who were executors and trustees of a will. One of them sold and transferred the stock, forging the signature of the other to the transfers, which were registered by the railway company. On the forgeries being discovered by the other executor a new trustee of the will was appointed in place of the forger, who then left this country. The two trustees informed the company of the forgeries, and applied to be registered owners of the stock. The company refused to comply with the application, and the two trustees thereupon brought an action for replacement of the stock in their names. Some of the stock was transferred more than six years before the action was brought:—*Held*, that the cause of action was the refusal by the company, when the forgeries were made known to them, to treat the plaintiffs as owners of the stock, and that, therefore, time under the Statute of Limitations would not begin to run against the plaintiffs until such refusal:—*Held*, also, that the plaintiffs were entitled to treat the transfers as nullities, and that the company must be ordered to register the plaintiffs as owners of the stock (*Barton* v. *North Staffordshire Rail. Co.* (1887), 38 Ch. D. 458). Though the executors of a deceased shareholder be described as executors on the register, they become joint shareholders in their individual capacity. Application having been made to a company to register a transfer of stock, the company sent a letter giving notice of it to the holder of the stock on the register, and stating that unless they heard from her to the contrary the stock would be transferred in their books. She did not answer the letter, and the company subsequently registered the transfer. Her signature to the transfer being a forgery, she brought an action against the company, claiming to have her name replaced on the register as holder of the stock:—*Held*, that she was not estopped from alleging that the transfer was invalid, and was entitled to the relief claimed (*Barton* v. *L. & N. W. Rail. Co.* (1889), 24 Q. B. D. 77). See also, *Mayor, etc. of the Staple of England* v. *Bank of England* (1887), 21 Q. B. D. 160; and see the Forged Transfers Act, 1891 (54 & 55 Vict. c. 43), amended by 55 & 56 Vict. c. 36; *Sheffield Corporation* v. *Barclay*, [1905] A. C. 392; *Attorney-General* v. *Odell*, [1906] 2 Ch. 47; *Bank of England* v. *Cutler*, [1908] 2 K. B. 208.

Share certificate working estoppel.

P., the owner of numbered shares in a joint stock company, transferred them to persons who were registered in the company's books as proprietors of the shares. P. afterwards fraudulently executed a transfer of the shares for

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value to T., who sent the transfer to the company, and received from them a certificate under their common seal, stating that he was the proprietor of the shares. T., acting *bonâ fide* on the faith of the certificate, sold the shares; but the company refused to register the purchaser as the proprietor, on the ground that after granting the certificate to T. they had discovered that he was not the real owner of the shares. T. then, to fulfil his contract with the purchaser, bought other shares in the market, and sued the company for the price:—*Held* by the House of Lords, affirming the decision of the Court of Appeal ([1891] 2 Q. B. 614), that the company were estopped by their certificate from denying that T. was the proprietor of the shares, and that he was entitled to recover from the company the damages which he had in fact sustained owing to their refusal to register the purchaser (*Balkis Consolidated Co., Ltd.* v. *Tomkinson*, [1893] A. C. 396). See further, *Dixon* v. *Kennaway & Co.*, [1900] 1 Ch. 833.

Transfer not to be made until calls paid.

16. No shareholder shall be entitled to transfer any share, after any call shall have been made in respect thereof, until he shall have paid such call, nor until he shall have paid all calls for the time being due on every share held by him.

This section only applies to the transfer of shares on which a call can be and has been made, and has no application to the transfer of shares on which all the calls have been paid, nor to stock; and a company is therefore bound to register a transfer of stock although the transferor be the holder of shares on which there are calls unpaid (*Hubbersty* v. *M. S. & L. Rail. Co.* (1867), L. R. 2 Q. B. 471).

If a transfer of shares on which calls are due has been registered, the transfer is not rendered invalid by this section; the former shareholder is not a contributory, and is merely a debtor to the company for the amount of the calls; and the directors may be liable for any loss occasioned by the transfer (*In re Hoylake Rail. Co.* (1874), L. R. 9 Ch. 257).

As to when a legatee of shares can call on the executors to pay calls made before and after the death of the testator, see *Jacques* v. *Chambers* (1846), 4 Rail. Cas. 502; *Wright* v. *Warren* (1851), 4 De G. & Sm. 367; *Armstrong* v. *Barnet* (1855), 24 L. J. Ch. 473.

Closing of transfer books.

17. It shall be lawful for the directors to close the register of transfers for the prescribed period, or if no period be prescribed, then for a period not exceeding fourteen days previous to each ordinary meeting, and they may fix a day for the closing of the same, of which seven days notice shall be given by advertisement in some newspaper as after mentioned; and any transfer made during the time when the transfer books are so closed shall, as between the company and the party claiming under the same, but not otherwise, be considered as made subsequently to such ordinary meeting.

The agenda paper of a directors' board meeting contained as the first business the consideration of the transfer of shares sent to the secretary for registration; and then, as the next business, the consideration of the question whether a call should be made to meet the company's liabilities:—*Held*, that the directors were entitled to take their business at the meeting in any order they thought proper and in the exercise of their fiduciary power of making a call (*Gilbert's Case* (1870), L. R. 5 Ch. 559) to pass a resolution for a call as their first business, so as to prevent the intending transferors from evading their liability by prior registration (*In re Crawley & Co.* (1889), 42 Ch. D. 209).

Transmission of shares by other means

18. If the interest in any share have become transmitted in consequence of the death or bankruptcy or insolvency of any shareholder, or in consequence of the marriage of a female shareholder, or by any other lawful means than by a transfer according to the provisions of this or the special Act, such transmission shall be authenticated by a declaration in writing as herein-after mentioned, or in such other manner as the directors shall require; and every such declaration shall state the manner in which and the party to whom such share shall have been so transmitted, and shall be made and signed by some credible person before a justice, or before a master or master extraordinary of the High Court of Chancery; and such declaration shall be left with the secretary, and thereupon he shall enter the name of the person entitled under such transmission in the register of shareholders; and for every such entry the company may demand any sum not exceeding the prescribed amount, and where no amount shall be prescribed then not exceeding five shillings; and until such transmission has been so authenticated no person claiming by virtue of any such transmission shall be entitled to receive any share of the profits of the undertaking nor to vote in respect of any such share as the holder thereof.

than transfer to be authenticated by a declaration.

See *Barton* v. *L. & N. W. Rail. Co.* (1889), 24 Q. B. D. 77, cited *ante*, p. 1089. See, further, the notes to s. 20, *infra*.

As to the difference between a transfer within the meaning of ss. 14, 15, 16 of the Act, *ante*, p. 1086 *et seq.*, and a transmission within the meaning of s. 18, *supra*, see *Copeland* v. *N. E. Rail. Co* (1856), 6 E. & B. 277.

19. If such transmission be by virtue of the marriage of a female shareholder, the said declaration shall contain a copy of the register of such marriage, or other particulars of the celebration thereof, and shall declare the indentity of the wife with the holder of such share; and if such transmission have taken place by virtue of any testamentary instrument, or by intestacy, the probate of the will or the letters of administration, or an official extract therefrom, shall, together with such declaration, be produced to the secretary; and upon such production in either of the cases aforesaid the secretary shall make an entry of the declaration in the said register of transfers.

Proof of transmission by marriage, will, etc.

20. The company shall not be bound to see to the execution of any trust, whether express, implied, or constructive, to which any of the said shares may be subject; and the receipt of the party in whose name any such share shall stand in the books of the company, or if it stands in the names of more parties than one, the receipt of one of the parties named in the register of shareholders, shall from time to time be a sufficient discharge to the company for any dividend or other sum of money payable in respect of such share, notwithstanding any trusts to which such share may then be subject, and whether or not the company have had notice of such trusts; and the company shall not be bound to see to the application of the money paid upon such receipt.

Company not bound to regard trusts.

In *Muir* v. *City of Glasgow Bank* (1879), 4 App. Cas. 337, certain trustees were registered as such, but nevertheless were held liable personally; and see *Gillespie* v. *City of Glasgow Bank*, *ibid.* 632, and *Cuninghame* v. *City of Glasgow Bank*, *ibid.* 607. Calls on shares standing in the name of a person who is trustee merely, must be paid by the trustee personally, and not by the *cestui que trust* (*Ex parte Bugg* (1866), 2 Dr. & Sm. 452). The executors of

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a deceased shareholder, though described as executors in the register, become joint shareholders in their individual capacity (*Barton* v. *L. & N. W. Rail. Co.* (1889), 24 Q. B. D. 77). "An executor whose testator has held shares in a joint stock company has generally one of two courses open to him. He may have the shares transferred into his own name, and become to all intents and purposes a partner in the company. He may, on the other hand, not wish to have the shares transferred into his name, and he ought in that case to have a reasonable time allowed him to sell the shares, and to produce a purchaser who will take a transfer of them": *per* Lord CAIRNS in *City of Glasgow Bank Liquidation* (*Buchan's Case*) (1879), 4 App. Cas., at p. 588. There should be evidence that the transfer has been authorised by a distinct and intelligent request on the part of the executor (*ibid.*).

PAYMENT OF CALLS.

And with respect to the payment of subscriptions and the means of enforcing the payment of calls, be it enacted as follows:

Subscriptions to be paid when called for.

21. The several persons who have subscribed any money towards the undertaking, or their legal representatives respectively, shall pay the sums respectively so subscribed, or such portions thereof as shall from time to time be called for by the company, at such times and places as shall be appointed by the company; and with respect to the provisions herein or in the special Act contained for enforcing the payment of calls, the word "shareholder" shall extend to and include the legal personal representatives of such shareholder.

A call is owing from the day on which it is made, although it may be "payable" on a subsequent day (*In re China Steamship and Labuan Coal Co.* (*Dawes' Case*) (1869), 38 L. J. Ch. 512).

To be liable for calls a person must be not only a subscriber but a shareholder (*Wolverhampton New Waterworks Co.* v. *Hawkesford* (1859), 6 C. B. (N.S.), 336).

As to payment by fully paid up shares, see *In re Wragg, Ltd.*, [1897] 1 Ch. 796. Full payment for shares may be made in advance (*Lock* v. *Queensland Investment, etc. Co.*, [1896] A. C. 461).

Power to make calls.

22. It shall be lawful for the company from time to time to make such calls of money upon the respective shareholders, in respect of the amount of capital respectively subscribed or owing by them, as they shall think fit, provided that twenty-one days notice at the least be given of each call, and that no call exceed the prescribed amount, if any, and that successive calls be not made at less than the prescribed interval, if any, and that the aggregate amount of calls made in any one year do not exceed the prescribed amount, if any; and every shareholder shall be liable to pay the amount of the calls so made, in respect of the shares held by him, to the persons and at the times and places from time to time appointed by the company.

A court of equity will not interfere with the making of calls, unless there is manifestly a proposed unauthorised application of the money so to be raised; it is the province of a general meeting of the shareholders to control the directors under ordinary circumstances (*Bailey* v. *Birkenhead, etc. Rail. Co.* (1850), 12 Beav. 433; and see *Orr* v. *Glasgow and South Western Rail. Co.* (1860), 3 Macq. 799).

A private Act provided that the whole of the sum of £100,000 should be subscribed before any of the powers given by the Act should be put in force.

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The company made a call on the shares before the subscription list was complete, and commenced an action for the call after it was so:—*Held*, that the action was not maintainable, the completion of the subscription list being necessary to enable the company to make the call as well as to bring the action (*Norwich and Lowestoft Navigation Co.* v. *Theobald* (1828), M. & M. 151).

As to conditions precedent to the making of a call, see *North Stafford Steel Co.* v. *Ward* (1868), L. R. 3 Ex. 172.

Calls may be made payable by instalments (*Ambergate Rail. Co.* v. *Norcliffe* (1851), 6 Ex. 629).

Interest to be paid on calls unpaid.

23. If, before or on the day appointed for payment, any shareholder do not pay the amount of any call to which he is liable, then such shareholder shall be liable to pay interest for the same at the rate allowed by law, from the day appointed for the payment thereof to the time of the actual payment.

The interest will apparently be the current rate of interest for the time being. See *London, Chatham and Dover Rail. Co.* v. *South Eastern Rail. Co.*, [1892] 1 Ch., at pp. 133, 136, 137.

Power to allow interest on payment of subscriptions before call.

24. It shall be lawful for the company, if they think fit, to receive from any of the shareholders willing to advance the same all or any part of the moneys due upon their respective shares beyond the sums actually called for; and upon the principal moneys so paid in advance, or so much thereof as from time to time shall exceed the amount of the calls then made upon the shares in respect of which such advance shall be made, the company may pay interest at such rate, not exceeding the legal rate of interest for the time being, as the shareholder paying such sum in advance and the company shall agree upon.

Enforcement of calls by action.

25. If at the time appointed by the company for the payment of any call any shareholder fail to pay the amount of such call, it shall be lawful for the company to sue such shareholder for the amount thereof, in any court of law or equity having competent jurisdiction, and to recover the same, with lawful interest, from the day on which such call was payable.

The Statute of Limitations is applicable to calls. The liability being founded on statute, the period of limitation is twenty years (*Cork and Bandon Rail. Co.* v. *Goode* (1853), 13 C. B. 826).

Declaration in action for calls.

26. In any action or suit to be brought by the company against any shareholder to recover any money due for any call it shall not be necessary to set forth the special matter, but it shall be sufficient for the company to declare that the defendant is the holder of one share or more in the company (stating the number of shares), and is indebted to the company in the sum of money to which the calls in arrear shall amount in respect of one call or more upon one share or more (stating the number and amount of each of such calls), whereby an action hath accrued to the company by virtue of this and the special Act.

This section does not apply to actions against executors for calls made in the lifetime of the testator (*Birkenhead and Cheshire Junction Rail. Co.* v. *Cotesworth* (1850), 5 Ex. 226).

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Matter to be proved in action for calls.

27. On the trial or hearing of such action or suit it shall be sufficient to prove that the defendant at the time of making such call was a holder of one share or more in the undertaking, and that such call was in fact made, and such notice thereof given as is directed by this or the special Act; and it shall not be necessary to prove the appointment of the directors who made such call, nor any other matter whatsoever; and thereupon the company shall be entitled to recover what shall be due upon such call, with interest thereon, unless it shall appear either that any such call exceeds the prescribed amount, or that due notice of such call was not given, or that the prescribed interval between two successive calls had not elapsed, or that calls amounting to more than the sum prescribed for the total amount of calls in one year had been made within that period.

As to set-off, see *In re Hiram Maxim Lamp Co.*, [1903] 1 Ch. 70.

Proof of proprietorship.

28. The production of the register of shareholders shall be primâ facie evidence of such defendant being a shareholder, and of the number and amount of his shares.

Where a defendant had applied for shares, and the company allotted shares to him, and duly addressed to him and posted a letter containing the notice of allotment, but the letter never was received by him, he was held by the Court of Appeal to be a shareholder (*Household Fire, etc. Co.* v. *Grant* (1870), 4 Ex. D. 216). This case overruled certain earlier decisions to the effect that mere proof of posting a notice of allotment was not sufficient. See also *In re Imperial Land Co. of Marseilles, Harris's Case* (1872), L. R. 7 Ch. 587.

The register is not conclusive. And it is competent for a party whose name appears on the register to prove that his name was placed there without his consent, or if with his consent, that it was obtained by fraud or misrepresentation, and in those cases the name will be removed by the Court (*Reese Silver Mining Co.* v. *Smith* (1869), L. R. 4 H. L. 64). In *Portal* v. *Emmens* (1876), 1 C. P. D. 213, LINDLEY, J., said: "The true view of the Act we take to be as follows: 1. If a proper register is kept, that register is *primâ facie* evidence that a person whose name is on it is a shareholder. 2. If, in addition, it be proved that such person has become, by subscribing the prescribed sum or otherwise, entitled to a share in the company, the evidence that he is a shareholder is conclusive. 3. If there be no register, or if the register is so defective as to be inadmissible in evidence, other evidence must be adduced to prove that a person is a shareholder. This case was affirmed on appeal, 1 C. P. D. 664. See *ante*, p. 1081.

And with respect to the forfeiture of shares for non-payment of calls, be it enacted as follows:

Forfeiture of shares for non-payment of calls.

29. If any shareholder fail to pay any call payable by him, together with the interest, if any, that shall have accrued thereon, the directors, at any time after the expiration of two months from the day appointed for payment of such call, may declare the share in respect of which such call was payable forfeited, and that whether the company have sued for the amount of such call or not.

Shareholders should be careful to notify any change of address to the secretary of their company, as it would be no answer to a forfeiture for non-payment of calls that letters sent to the given address had not reached the shareholder; neither would a subsequent offer to pay all arrears and interest be sufficient to establish a claim for relief (*Sparks* v. *Proprietors of the*

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Liverpool Waterworks (1807), 13 Ves. 428; *Pearson* v. *London, etc. Rail. Co.* (1845), 14 Sim. 541).

The remedies open to the company of declaring the shares forfeited and of suing the shareholder for calls are cumulative (*G. N. Rail. Co.* v. *Kennedy*, (1840), 4 Ex. 417). This section expressly provides for interest on the calls. *Cf. Johnson* v. *Lyttles Iron Agency* (1877), Ch. D. 687.

Notice of forfeiture to be given before declaration thereof.

30. Before declaring any share forfeited the directors shall cause notice of such intention to be left at or transmitted by the post to the usual or last place of abode of the person appearing by the register of shareholders to be the proprietor of such share; and if the holder of any such share be abroad, or if his usual or last place of abode be not known to the directors, by reason of its being imperfectly described in the shareholders' address book, or otherwise, or if the interest in any such share shall be known by the directors to have become transmitted otherwise than by transfer, as hereinbefore mentioned, but a declaration of such transmission shall not have been registered as aforesaid, and so the address of the parties to whom the same may have been transmitted or may for the time being belong shall not be known to the directors, the directors shall give public notice of such intention in the London or Dublin Gazette, according as the company's principal place of business shall be situate in England or Ireland, and also in some newspaper, as after mentioned; and the several notices aforesaid shall be given twenty-one days at least before the directors shall make such declaration of forfeiture.

Forfeiture to be confirmed by a general meeting.

31. The said declaration of forfeiture shall not take effect, so as to authorise the sale or other disposition of any share until such declaration have been confirmed at some general meeting of the company, to be held after the expiration of two months at the least from the day on which such notice of intention to make such declaration of forfeiture shall have been given; and it shall be lawful for the company to confirm such forfeiture at any such meeting, and by an order at such meeting, or at any subsequent general meeting, to direct the share so forfeited to be sold or otherwise disposed of.

Sale of forfeited shares.

32. After such confirmation as aforesaid it shall be lawful for the directors to sell the forfeited share, either by public auction or private contract, and, if there be more than one such forfeited share, then either separately or together, as to them shall seem fit; and any shareholder may purchase any forfeited share so sold.

Evidence as to forfeiture of shares.

33. A declaration in writing by some credible person not interested in the matter, made before any justice, or before any master or master extraordinary of the High Court of Chancery, that the call in respect of a share was made and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was declared and confirmed in manner hereinbefore required, shall be sufficient evidence of the facts therein stated; and such declaration, and the receipt of the treasurer of the company for the price of such share, shall constitute a good title to such share; and a certificate of

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No more shares to be sold than sufficient for payment of calls.

34. The company shall not sell or transfer more of the shares of any such defaulter than will be sufficient, as nearly as can be ascertained at the time of such sale, to pay the arrears then due from such defaulter on account of any calls, together with interest, and the expenses attending such sale and declaration of forfeiture; and if the money produced by the sale of any such forfeited shares be more than sufficient to pay all arrears of calls and interest thereon due at the time of such sale, and the expenses attending the declaration of forfeiture and sale thereof, the surplus shall, on demand, be paid to the defaulter.

On payment of calls before sale the forfeited shares to revert.

35. If payment of such arrears of calls and interest and expenses be made before any share so forfeited and vested in the company shall have been sold, such share shall revert to the party to whom the same belonged before such forfeiture, in such manner as if such calls had been duly paid.

Reference should be made to the important provisions as to the cancellation and surrender of shares which are contained in Part I. of the Companies Clauses Act, 1863, *post*, p. 1142. That part does not, however, apply to any company unless it has been expressly incorporated by such company's special Act.

REMEDIES AGAINST SHAREHOLDERS.

And with respect to the remedies of creditors of the company against the shareholders, be it enacted as follows:

Execution against shareholders to the extent of their shares in capital not paid up.

36. If any execution, either at law or in equity, shall have been issued against the property or effects of the company, and if there cannot be found sufficient whereon to levy such execution, then such execution may be issued against any of the shareholders to the extent of their shares respectively in the capital of the company not then paid up: Provided always, that no such execution shall issue against any shareholder except upon an order of the court in which the action, suit, or other proceeding shall have been brought or instituted, made upon motion in open court after sufficient notice in writing to the person sought to be charged; and upon such motion such court may order execution to issue accordingly; and for the purpose of ascertaining the names of the shareholders, and the amount of capital remaining to be paid upon their respective shares, it shall be lawful for any person entitled to any such execution, at all reasonable times, to inspect the register of shareholders without fee.

Leave to issue execution.

See now R.S.C., Ord. XLII., r. 23 which provides that "In the following cases . . .

"(d) Where a party is entitled to execution against any of the shareholders of a joint stock company upon a judgment recorded

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against such company or against a public officer or other person representing such company;

the party alleging himself to be entitled to execution may apply to the court or a judge for leave to issue execution accordingly. And such court or judge may, if satisfied that the party so applying is entitled to issue execution, make an offer to that effect, or may order that any issue or question necessary to determine the rights of the parties shall be tried in any of the ways in which any question in an action may be tried. And in either case such court or judge may impose such terms as to costs or otherwise as shall be just."

It will be observed that the rule enables the court or judge either to make at once an order for execution against the shareholder, or to order any question to be tried necessary to determine the rights of the parties; as, for example, whether the person against whom execution is sought is or is not a shareholder.

Scire facias.

In *Lee* v. *Bude and Torrington Rail. Co.* (1871), L. R. 6 C. P. 576, WILLES, J., reviewed the authorities as to the circumstances under which the court was in use to grant a writ of *scire facias*, and in that case it was decided that the discretion of the court in granting or refusing a *scire facias* against a shareholer is to be a judicial discretion, exercised according to the known rules of law, and that where a *primâ facie* case is made out, the court will not withhold the writ, but will leave the party to set up to the *scire facias* any defence, legal or equitable, which he may have. In this case the plaintiffs had been solicitors for the company in obtaining two private Acts, each of which contained a clause to the effect that "all costs, charges, and expenses of and incident to the preparing and applying for, and the obtaining and passing of the Act, shall be paid by the company." WILLES, J., said, "It is only necessary to refer to *Carden* v. *General Cemetery Co.* (1839) 5 Bing. N. C. 253, to show that those words have a distinct meaning, giving a remedy by action against the company, including the execution against unpaid calls on shares under s. 36 of the Companies Consolidation Act, 1845, viz., by *scire facias* against the shareholders." On the subject of solicitors' costs in obtaining an Act, *cf. In re Brampton and Longtown Rail. Co., Shaw's Claim* (1875), L. R. 10 Ch. 177; *In re Tilleard* (1863), 32 L. J. Ch. 765; and *In re Manchester, Middleton, and District Tramways Co.*, [1893] 2 Ch. 638.

Where the qualification of a director is declared to be the possession of so many shares, and the Act names certain persons as first directors, such persons are each of them liable for their qualification, and may be proceeded against under s. 36, even though no ordinary meeting of the company ever was held, nor any meeting of directors, nor any general meeting of shareholders, and even though no register of shareholders ever was made, and no shares were ever allotted (*Portal* v. *Emmens* (1876), 1 C. P. D. 664). See *In re Teme Valley Rail. Co., Forbes' Case*, cited *ante*, p. 1082; *cf. In re Disderi & Co.* (1870), L. R. 11 Eq. 242.

A railway company was incorporated by a special Act passed in June, 1866, in which T. and A. were nominated directors, until the first ordinary meeting of the company, and which provided also that the qualification of a director should be the possession of fifty shares. In August, 1866, T. sent in his resignation as director, and S. was informally appointed director in his stead, and thenceforward continued to act as such. T. took no part in the affairs of the company, never applied for any shares, none were alloted to him, and, although calls were made, no notice thereof was given to him. A. acted as director until December, 1867, when he also resigned his directorship; shortly afterwards B., who had not previously acted as a director, and whose name was not in the special Act, attended the meetings of the board as director. No shares were ever allotted to A. No first ordinary meeting of the company was ever held. After the resignations of T. and A., an informal register of shareholders was drawn up, from which it appeared that the whole number of shares constituting the capital of the company had been allotted to other persons than T. and A. After the resignation of

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T. and A., the railway company became indebted to the D. Banking Company. In February, 1876, the plaintiff, as public officer, obtained judgment against the railway company for £18,000, and in November issued execution against them; the execution being unsatisfied, he issued, in July, 1877, writs of *scire facias* upon the judgment against T. and A., as holders severally of fifty shares in the railway company:—*Held*, (distinguishing *Portal* v. *Emmens*), that the writs of *scire facias* could not be maintained against T. and A., for it was to be inferred from the facts above stated that the railway company had accepted from T. and A. a surrender of the inchoate right to shares which they possessed under the special Act; that the evidence of an acceptance of the surrender of an inchoate right need not be as express as would be required in the case of the surrender of specific shares actually allotted; and that the lapse of years, during which the railway company had not treated T. and A. as shareholders was strong evidence that they had abandoned all rights against them; and that the plaintiffs' causes of action having accrued since their resignations, T. and A. were not estopped as against him from denying their liability as shareholders; and that he could not be in a better position as regarded them than the railway company (*Kipling* v. *Todd*, and *Kipling* v. *Allan* (1878), 3 C. P. D. 350).

The above case was followed in *Mammatt* v. *Brett* (1886), 54 L. T. 165. It there appeared that a railway company was incorporated by special Act on August 18th, 1882. In s. 4 the defendant was described as a promoter of the undertaking, and in s. 30 as one of the first directors who should continue in office until the first ordinary meeting held after the passing of the Act. Sect. 28 fixed the qualification of a director at not less than 100 shares. The defendant attended one board meeting, and on December 23rd, 1882, sent in his resignation as director to the board, which was accepted by them the following week. The defendant took no part in the affairs of the company. He never had any shares allotted to him, nor was any register of shareholders kept. No shares were ever taken up by the public, and, the objects of the company failing, an abandonment Act was passed in August, 1885. The claim of the plaintiff was for services rendered by him as a surveyor and engineer in relation to and before the formation of the company. It was held that as the resignation by the defendant was *boná fide*, it was a surrender of his inchoate right to take shares, and operated to divest him of any liability attaching to the holding of shares, and therefore leave to issue execution against him was refused. *Cf. In re Columbia Chemical Works, Brett's Case* (1883), 25 Ch. D. 283.

Discretionary power in the court.

For cases illustrating the discretionary power of the court, see *Shrimpton* v. *Sidmouth Rail. Co.* (1867), L. R. 3 C. P. 80; *Philipson* v. *Earl of Egremont* (1844), 6 Q. B. 587; *Green* v. *Nixon* (1857), 23 Beav. 530; *Horne* v. *Kilkenny and Great Southern, etc. Rail. Co.* (1855), 1 K. & J. 399; *Healey* v. *Chichester and Midhurst Rail. Co.* (1870), L. R. 9 Eq. 148; *Burke* v. *Dublin Trunk, etc. Rail. Co.* (1867), L. R. 3 Q. B. 47; *Rigby* v. *Same* (1867), L. R. 2 C. P. 586; *Devereux* v. *Kilkenny and Great Southern, etc. Rail. Co.* (1850), 5 Ex. 834. Writs of *scire facias* have issued, notwithstanding the company was possessed of some property, if such property is manifestly shown to be insufficient (*Rigby* v. *Dublin Trunk, etc. Rail. Co., supra; Ilfracombe Rail. Co.* v. *Lord Poltimore* (1868), L. R. 3 C. P. 288). As to proceedings to obtain execution against shareholders after publication in the Gazette of notice of the filing of a scheme of arrangement by a railway company under the Railway Companies Act, 1867 (30 & 31 Vict. c. 127), see *In re Devon and Somerset Rail. Co.* (1868), L. R. 6 Eq. 610. An offer to pay, under protest, the sum claimed is a good tender. A creditor, having obtained a judgment against a railway company, gave notice to a shareholder that he was about to apply for leave to issue a *scire facias* against him, and the shareholder thereupon tendered, under protest, the whole sum claimed, which included £150 for costs incurred since the judgment; but the creditor refused it, and obtained a rule *nisi* for a *scire facias*:—*Held*, that the tender was good, and ought to have been accepted by the creditor; and the court discharged the rule with costs, without prejudice to another application, if the sum claimed,

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minus the £150, were not paid (*Scott* v. *Uxbridge and Rickmansworth Rail. Co.* (1866), L. R. 1 C. P. 596). It will be no answer that the defendant was simply a transferee for the benefit of other parties without any benefit to himself, and that upon the assurance that he should incur no liability or responsibility whatever in respect of such shares (*Bill* v. *Richards* (1857), 2 H. & N. 311). Before granting a rule it must be shown to the court by affidavit that the person sought to be charged is a shareholder, and it will not be enough to show that he has applied for and received an allotment of shares and paid a deposit thereon (*Edwards* v. *Kilkenny and Great Southern and Western Rail. Co.* (1863), 14 C. B. (N. S.) 526). As to service of notice, see *Ilfracombe Rail. Co.* v. *Devon and Somerset Rail. Co., In re Poltimore* (1866), L. R. 2 C. P. 15).

Reimbursement of such shareholders.

37. If by means of any such execution any shareholder shall have paid any sum of money beyond the amount then due from him in respect of calls, he shall forthwith be reimbursed such additional sum by the directors out of the funds of the company.

POWER TO BORROW MONEY.

And with respect to the borrowing of money by the company on mortgage or bond, be it enacted as follows :

Power to borrow money.

38. If the company be authorised by the special Act to borrow money on mortgage or bond, it shall be lawful for them, subject to the restrictions contained in the special Act, to borrow on mortgage or bond such sums of money as shall, from time to time, by an order of a general meeting of the company, be authorised to be borrowed, not exceeding in the whole the sum prescribed by the special Act, and for securing the repayment of the money so borrowed, with interest, to mortgage the undertaking, and the future calls on the shareholders, or to give bonds in manner hereinafter mentioned.

It is provided by s. 5 of the Lands Clauses Act, 1860 (23 & 24 Vict. c. 106), *post*, that if lands are purchased in consideration of the payment of a rentcharge, the borrowing powers shall be reduced by an amount equal to twenty years purchase of the rentcharge.

Irregularity in issue of securities.

In the course of his judgment in *In re Romford Canal Co., Pocock's Claim, Trickett's Claim, and Carew's Claim* (1883), 24 Ch. D. 85, KAY, J., observed: "I understand the law, as at present settled, or perhaps I should rather say developed, thus: Where a company have power to issue securities, an irregularity in the issue cannot be set up against even the original holder if he has a right to presume *omnia ritè acta* (*Fountaine* v. *Carmarthen Rail. Co.* (1868), L. R. 5 Eq. 316). If such security be legally transferable, such an irregularity, and, *à fortiori*, any equity against the original holder, cannot be asserted by the company against a *bonâ fide* transferee for value without notice (*Webb* v. *Commissioners of Herne Bay* (1870), L. R. 5 Q. B. 642). Nor can such an equity be set up against an equitable transferee, whether the security was transferable at law or not, if by the original conduct of the company in issuing the security, or by their subsequent dealing with the transferee, he has a superior equity (*In re Agra and Masterman's Bank* (1867), L. R. 2 Ch. 391 ; *In re Blakely Ordnance Co.* (1867), L. R. 3 Ch. 154 ; *Dickson* v. *Swansea Vale, etc. Rail. Co.* (1868), L. R. 4 Q. B. 44)." It appeared in the *Romford Case* that the resolutions to issue the debentures were passed at a meeting at which an insufficient number of shareholders were present. Debentures were issued to the contractor, J. B. P., who was present at the meeting, and knew of the irregularities of the company. J. B. P. transferred some of the debentures to Y., a sub-contractor, for a nominal consideration, and some to C. for value. Y. had a bill against J. B. P., and P. discounted it and took as security a deposit of some of the

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debentures which had been registered in the name of J. B. P. These debentures were not transferred to P., and the transfer to Y. was not registered. T. took a transfer of other debentures from Y. for a nominal consideration which had not been registered in the name of J. B. P., but the transfer to Y. had been registered, and T. alleged that he gave value to Y. Registration of the transfer to T. was refused. He brought an action against the company for payment and for registration, but it was stopped by winding-up proceedings. C. had a transfer for full value, and registered. KAY, J., held that C. had a valid claim to be paid his debentures, and that the company were estopped from setting up the irregularity in the issue of them; also that P. and T. must be treated as equitable transferees only, but without reason to suspect any irregularity in the issue, and that they could be allowed to recover only such a sum as each of them might be able to prove he *bonâ fide* advanced upon the securities which he received. See, further, *Athenæum Life Assurance Society* v. *Pooley* (1859), 3 De G. & J. 294; *Aberaman Iron Works* v. *Wickens* (1868), L. R. 4 Ch. 101; *Re Northern Assam Tea Co.* (1870), L. R. 10 Eq. 458; *Re Hercules Insurance Co.* (1874), L. R. 19 Eq. 302.

When no implied power to borrow.

A company under the Act of 1845 has no power to borrow, except such as is conferred by the special and incorporated Acts. There is no implied inherent power of borrowing in such a case. See, *per* FRY, J., in *Landowners', etc. Co.* v. *Ashford* (1880), 16 Ch. D., at p. 436, citing *per* CROMPTON, J., in *Chambers* v. *Manchester and Milford Rail. Co.* (1864), 5 B. & S., at p. 607; *Baroness Wenlock* v. *River Dee Co.* (1885), 10 App. Cas. 354; *Ex parte Watson* (1888), 21 Q. B. D. 301. Overdrafts on a banker are loans, and, except in those cases where the overdrafts have been applied in payment of creditors having enforceable demands against the company (see *infra*), the company will not be responsible for them unless all the conditions are observed which enable the company to borrow (*Brooks & Co.* v. *Blackburn, etc. Society* (1884), 9 App. Cas. 857; *Looker* v. *Wrigley* (1882), 9 Q. B. D. 397). After these cases two decisions of STUART, V.-C. (*In re Cefn Cilcen Mining Co.* (1868), L. R. 7 Eq. 88, and *Waterlow* v. *Sharp* (1869), L. R. 8 Eq. 501), must be considered as overruled.

Where a company borrows money *ultra vires*, the lender, so far as the money is applied to the discharge of legal debts and liabilities of the company is entitled to stand in the shoes of the creditors; but he is not subrogated to any securities or priorities of the creditors who are paid by means of his money (*In re Wrexham, Mold and Connah's Quay Rail. Co.*, [1899] 1 Ch, 440). In this case will be found reviewed the earlier decisions of *German Mining Co.'s Case* (1853), 4 De G. M. & G. 19; *In re Cork and Youghal Rail. Co.* (1869), L. R. 4 Ch. 748; *Brooks & Co.* v. *Blackburn Building Society* (1884), 9 App. Cas. 857; and *Baroness Wenlock* v. *River Dee Co.* (1885), 10 App. Cas. 354.

Cf. the following cases as to overdrafts by local authorities: *R.* v. *Reed* (1880), 5 Q. B. D. 483; *Attorney-General* v. *De Winton* (1906), 2 Ch. 106; *Attorney-General* v. *Tottenham U. D. C.* (1909), 73 J. P. 437; *Attorney-General* v. *West Ham Corporation*, [1910] 2 Ch. 560.

A debenture contains the whole contract, and therefore a prospectus cannot be looked at for the purpose of interpreting the debenture (*In re Chicago and North West Granaries Co. Ltd.*, *Morrison* v. *Same*, [1898] 1 Ch. 263).

Debenture stock.

As to the creation and issue of debenture stock, see Companies Clauses Act, 1863, s. 22, *post*, p. 1147.

Mortgages.

A mortgage deed of a waterworks company in the form provided by Schedule (C.) is not an interest in land within the meaning of the Mortmain Act (*Holdsworth* v. *Davenport* (1876), 3 Ch. D. 185). Nor is a debenture of a railway company (*In re Mitchell's Estate, Mitchell* v. *Moberly* (1877), 6 Ch. D. 655). See, further, on this subject, *Attree* v. *Hawe* (1878), 9 Ch. D. 337; *Jervis* v. *Lawrance* (1882), 22 Ch. D. 202; *In re Parker, Wignall* v. *Park*, [1891] 1 Ch. 682; *In re Pickard, Elmsley* v. *Mitchell*, [1894] 3 Ch. 704. *Cf.* *Driver* v *Broad*, [1893] 1 Q. B. 744. A debenture in the form of Schedule (C.).

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does not give the debenture holder a specific charge upon the surplus lands of the company, or the proceeds of the sale of them, so as to entitle him to an order for a receiver of the sale moneys or interim rents. The "undertaking" mortgaged is the going concern created by Parliament, which cannot be broken up or interfered with by the mortgagee. The phrase "sums of money" in the form in Schedule (C.) means money *ejusdem generis* as the tolls, and are the earnings of the undertaking which may be made available to satisfy the mortgage (*Gardner* v. *L. C. & D. Rail. Co.* (1866), L. R. 2 Ch. 201). As to railway companies, see now 30 & 31 Vict. c. 127, s. 4, which provides that the rolling stock and plant, etc., shall not be liable to be taken in execution at law or in equity at any time after the passing of this Act and before the first day of September, 1868" under the conditions there stated. By 38 & 39 Vict. c. 31, the words "and before the first day of September, 1868," were repealed, and it was enacted that s. 4 should be made perpetual, and that s. 4 of the corresponding Act for Scotland (30 & 31 Vict. c. 126) should be perpetual. This Act of 38 & 39 Vict. c. 31, is scheduled to and repealed by 46 & 47 Vict. c. 39 (Statute Law Revision Act, 1883). The schedule to this last-mentioned Act has, in its turn, been repealed by 61 & 62 Vict. c. 22 (Statute Law Revision Act, 1898). The effect of these repeals is that, by virtue of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), ss. 11 and 38, the Act of 30 & 31 Vict. c. 127, s. 4, remains in full efficacy with the limit of time deleted. Debentures having been issued upon a waterworks undertaking authorised under the Gas and Water Works Facilities Acts, it was held that, the undertaking being for a public purpose and not a mere private undertaking, the principle of the decision in *Gardner* v. *L. C. & D. Rail. Co.*, *supra*, was applicable; that the debentures did not confer upon the holders of them a power to sell the undertaking; and that the court ought not to direct a sale of the undertaking or the appointment of a manager (*Blaker* v. *Herts and Essex Waterworks Co.* (1889), 41 Ch. D. 399). See this case more fully, *ante*, p. 795. In the case of tramway companies, holders of debentures (whether the company be incorporated under the Companies Act, 1862, or by a special Act) are, in the event of default, entitled only to the appointment of a receiver of the undertaking and the earnings thereof, and are not entitled to an order for the sale of the undertaking or to the appointment of a manager (*Marshall* v. *South Staffordshire Tramways Co.*, [1895] 2 Ch. 37; disapproving *Bartlett* v. *West Metropolitan Tramways Co.*, [1893] 3 Ch. 437). The principle of *Gardner* v. *L. C. & D. Rail. Co.* does not prevent the levying by distress of penalties imposed on a tramway company for non-repair of their rails (*Pegge* v. *Neath District Tramways Co.*, [1895] 2 Ch. 508).

As to charge on surplus lands, see *Gardner* v. *L. C. & D. Rail. Co.*, *Ex parte Grissell* (1867), L. R. 2 Ch. 385; *Stagg* v. *Medway* (*Upper*) *Navigation Co.*, [1903] 1 Ch. 169; *Reeve* v. *Medway* (*Upper*) *Navigation Co.* (1905), 21 T. L. R. 400.

Debenture given as floating security.

As to the rights of parties when debentures are given as a floating security, see *Sadler* v. *Worley*, [1894] 2 Ch. 170; *Government Stock, etc. Co. Ltd.* v. *Manila Rail. Co., Ltd.*, [1897] A. C. 81; *Davey & Co.* v. *Williamson & Sons*, [1898] 2 Q. B. 194; *Wallace* v. *Evershed*, [1899] 1 Ch. 891; *Edward Nelson & Co. Ltd.* v. *Faber & Co.*, [1903] 2 K. B. 367.

Power to reborrow.

39. If, after having borrowed any part of the money so authorised to be borrowed on mortgage or bond, the company pay off the same, it shall be lawful for them again to borrow the amount so paid off, and so from time to time; but such power of reborrowing shall not be exercised without the authority of a general meeting of the company, unless the money be so reborrowed in order to pay off any existing mortgage or bond.

See, on the subject of reborrowing, *Fountaine* v. *Carmarthen Rail. Co.* (1868), L. R. 5 Eq. 316; *Landowners', etc. Co.* v. *Ashford* (1880), 16 Ch. D. 411, 438; *Re Romford Canal Co.* (1883), 24 Ch. D. 85, 92.

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Evidence of authority for borrowing.

40. Where by the special Act the company shall be restricted from borrowing any money on mortgage or bond until a definite portion of their capital shall be subscribed or paid up, or where by this or the special Act the authority of a general meeting is required for such borrowing, the certificate of a justice that such definite portion of the capital has been subscribed or paid up, and a copy of the order of a general meeting of the company authorising the borrowing of any money, certified by one of the directors or by the secretary to be a true copy, shall be sufficient evidence of the fact of the capital required to be subscribed or paid up having been so subscribed or paid up, and of the order for borrowing money having been made; and upon production to any justice of the books of the company, and of such other evidence as he shall think sufficient, such justice shall grant the certificate aforesaid.

Mortgages and bonds to be stamped.

41. Every mortgage and bond for securing money borrowed by the company shall be by deed under the common seal of the company, duly stamped, and wherein the consideration shall be truly stated; and every such mortgage deed or bond may be according to the form in the Schedule (C.) or (D.) to this Act annexed, or to the like effect.

Rights of mortgagees.

42. The respective mortgagees shall be entitled one with another to their respective proportions of the tolls, sums, and premises comprised in such mortgages, and of the future calls payable by the shareholders, if comprised therein, according to the respective sums in such mortgages mentioned to be advanced by such mortgagees respectively, and to be repaid the sums so advanced, with interest, without any preference one above another, by reason of priority of the date of any such mortgage, or of the meeting at which the same was authorised.

See notes to s. 38, *ante,* p. 1099.

Application of calls, notwithstanding mortgage.

43. No such mortgage (although it should comprise future calls on the shareholders) shall, unless expressly so provided, preclude the company from receiving and applying to the purposes of the company any calls to be made by the company.

Rights of obligees.

44. The respective obligees in such bonds shall, proportionally according to the amount of the moneys secured thereby, be entitled to be paid, out of the tolls or other property or effects of the company, the respective sums in such bonds mentioned, and thereby intended to be secured, without any preference one above another by reason of priority of date of any such bond, or of the meeting at which the same was authorised, or otherwise howsoever.

After the appointment of a receiver of a railway undertaking made in a suit on behalf of debenture holders, a debenture holder recovered judgment at law and petitioned for leave to issue execution:—*Held,* that the petitioner was not entitled to issue execution otherwise than as a trustee for himself and all other debenture holders entitled by the special Acts of the company to be paid *pari passu* with himself, but an inquiry was directed whether it would be for the benefit of the debenture-holders that any proceedings should be taken by the receiver for the purpose of making the judgment available for them (*Bowen* v. *Brecon Rail. Co., Ex parte Howell* (1867), L. R.

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3 Eq. 541). But see *per* GIFFARD, L.J., in *In re Potteries, Shrewsbury, etc Rail. Co.* (1869), L. R. 5 Ch., at p. 69.

As to the effect of issuing debentures in blank as regards the names of the obligees, see *Queensland Land and Coal Co., In re Davis* v. *Martin*, [1894] 3 Ch. 181; followed in *Pegge* v. *Neath and District Tramways Co., Ltd.*, [1898] 1 Ch. 183.

Register of mortgages and bonds.

45. A register of mortgages and bonds shall be kept by the secretary, and within fourteen days after the date of any such mortgage or bond an entry or memorial, specifying the number and date of such mortgage or bond, and the sums secured thereby, and the names of the parties thereto, with their proper additions, shall be made in such register; and such register may be perused at all reasonable times by any of the shareholders, or by any mortgagee or bond creditor of the company, or by any person interested in any such mortgage or bond, without fee or reward.

The right of perusal may be exercised without assigning any reason, and may be enforced by injunction restraining interference by the company with the exercise of the statutory right, without its being necessary to apply for *mandamus* (*Holland* v. *Dickson* (1888), 37 Ch. D. 669). The right given by s. 28 of the Companies Clauses Consolidation Act, 1863 (26 & 27 Vict. c. 118), to inspect includes a right to take copies, and the fact that a person has taken his stock in a company at the instance of a rival company, and for the purpose of serving the interests of the rival company, does not disentitle him to the assistance of the court in enforcing his statutory right (*Mutter* v. *Eastern and Midlands Rail. Co.* (1888), 38 Ch. D. 92). See a case to the like effect under s. 43 of the Companies Act, 1862 (25 & 26 Vict. c. 89) (*Nelson* v. *Anglo-American Land, etc. Co.*, [1897] 1 Ch. 130). See also *Davies* v. *Gaslight and Coke Co.*, cited under s. 10, *ante*, p. 1084.

Transfers of mortgages and bonds to be stamped.

46. Any party entitled to any such mortgage or bond may from time to time transfer his right and interest therein to any other person; and every such transfer shall be by deed duly stamped, wherein the consideration shall be truly stated; and every such transfer may be according to the form in the Schedule (E.) to this Act annexed, or to the like effect.

Stamp duties on mortgages or bonds and transfer of such securities are now regulated by the Stamp Act, 1891 (54 & 55 Vict. c. 39).

Transfers of mortgages and bonds to be registered.

47. Within thirty days after the date of every such transfer, if executed within the United Kingdom, or otherwise within thirty days after the arrival thereof in the United Kingdom, it shall be produced to the secretary, and thereupon the secretary shall cause an entry or memorial thereof to be made in the same manner as in the case of the original mortgage; and after such entry every such transfer shall entitle the transferee to the full benefit of the original mortgage or bond in all respects; and no party, having made such transfer, shall have power to make void, release, or discharge the mortgage or bond so transferred, or any money thereby secured; and for such entry the company may demand a sum not exceeding the prescribed sum, or, where no sum shall be prescribed, the sum of two shillings and sixpence; and until such entry the company shall not be in any manner responsible to the transferee in respect of such mortgage.

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Payment of interest on moneys borrowed.

48. The interest of the money borrowed upon any such mortgage or bond shall be paid at the periods appointed in such mortgage or bond, and if no period be appointed, half-yearly, to the several parties entitled thereto, and in preference to any dividends payable to the shareholders of the company.

If the debt be not repaid on the day appointed, the debenture will continue to carry interest, although not so expressed in the deed (*Price* v. *G. W. Rail. Co.* (1847), 16 M. & W. 244, and *Morgan* v. *Jones* (1853), 8 Ex. 620).

Transfers of interest to be stamped.

49. The interest on any such mortgage or bond shall not be transferable, except by deed duly stamped.

Repayment of money borrowed at time fixed.

50. The company may, if they think proper, fix a period for the repayment of the principal money so borrowed, with the interest thereof, and in such case the company shall cause such period to be inserted in the mortgage deed or bond; and upon the expiration of such period the principal sum, together with the arrears of interest thereon, shall, on demand, be paid to the party entitled to such mortgage or bond; and if no other place of payment be inserted in such mortgage deed or bond, such principal and interest shall be payable at the principal office or place of business of the company.

Repayment of money borrowed where no time fixed.

51. If no time be fixed in the mortgage deed or bond for the repayment of the money so borrowed, the party entitled to the mortgage or bond may, at the expiration or at any time after the expiration of twelve months from the date of such mortgage or bond, demand payment of the principal money thereby secured, with all arrears of interest, upon giving six months previous notice for that purpose; and in the like case the company may at any time pay off the money borrowed, on giving the like notice; and every such notice shall be in writing or print, or both, and if given by a mortgagee or bond creditor shall be delivered to the secretary or left at the principal office of the company, and if given by the company shall be given either personally to such mortgagee or bond creditor or left at his residence, or if such mortgagee or bond creditor be unknown to the directors, or cannot be found after diligent inquiry, such notice shall be given by advertisement in the London or Dublin Gazette, according as the principal office of the company shall be in England or Ireland, and in some newspaper, as after mentioned.

Interest to cease on expiration of notice to pay off mortgage or bond.

52. If the company shall have given notice of their intention to pay off any such mortgage or bond at a time when the same may lawfully be paid off by them, then at the expiration of such notice all further interest shall cease to be payable on such mortgage or bond, unless, on demand of payment made pursuant to such notice, or at any time thereafter, the company shall fail to pay the principal and interest due at the expiration of such notice on such mortgage or bond.

Arrears of interest,

53. Where by the special Act the mortgagees of the company shall be empowered to enforce the payment of the arrears of interest, or the arrears of principal and interest, due on such mortgages, by the appointment of a receiver, then, if within thirty days after the interest accruing upon any such mortgage has become payable, and, after demand thereof in writing, the same be not paid, the mortgagee may, without prejudice to his right to sue for the interest so in arrear in any of the superior courts of law or equity, require the appointment of a receiver, by an application to be made as hereinafter provided; and if within six months after the principal money owing upon any such mortgage has become payable, and after demand thereof in writing, the same be not paid, the mortgagee, without prejudice to his right to sue for such principal money, together with all arrears of interest in any of the superior courts of law or equity, may, if his debt amount to the prescribed sum, alone, or, if his debt does not amount to the prescribed sum he may, in conjunction with other mortgagees whose debts, being so in arrear, after demand as aforesaid, shall, together with his, amount to the prescribed sum, require the appointment of a receiver, by an application to be made as hereinafter provided.

when to be enforced by appointment of a receiver.

Arrears of principal and interest.

Appointment of receiver.

54. Every application for a receiver in the cases aforesaid shall be made to two justices, and on any such application it shall be lawful for such justices, by order in writing, after hearing the parties, to appoint some person to receive the whole or a competent part of the tolls or sums liable to the payment of such interest, or such principal and interest, as the case may be, until such interest, or until such principal and interest, as the case may be, together with all costs, including the charges of receiving the tolls or sums aforesaid, be fully paid; and upon such appointment being made all such tolls and sums of money as aforesaid shall be paid to and received by the person so to be appointed; and the money so to be received shall be so much money received by or to the use of the party to whom such interest, or such principal and interest, as the case may be, shall be then due, and on whose behalf such receiver shall have been appointed; and after such interest and costs, or such principal, interest, and costs, have been so received, the power of such receiver shall cease.

As to appointment of receiver, see Gasworks Clauses Act, 1871, s. 8, *ante*, p. 222, and the Companies Clauses Act, 1863, s. 26, *post*, p. 1151.

Access to account books by mortgagees.

55. At all seasonable times the books of account of the company shall be open to the inspection of the respective mortgagees and bond creditors thereof, with liberty to take extracts therefrom, without fee or reward.

See *Hill* v. *Manchester and Salford Waterworks Co.* (1833), 5 B. & Ad. 866; *Clarke* v. *Imperial Gas Co.* (1832), 4 B. & Ad. 315.

LOANS.

And with respect to the conversion of the borrowed money into capital, be it enacted as follows:—

Power to convert loan into capital.

56. It shall be lawful for the company, if they think fit, unless it be otherwise provided by the special Act, to raise the additional sum so

Sect. 56. authorised to be borrowed, or any part thereof, by creating new shares of the company, instead of borrowing the same, or, having borrowed the same, to continue at interest only a part of such additional sum, and to raise part thereof by creating new shares; but no such augmentation of capital as aforesaid shall take place without the previous authority of a general meeting of the company.

In all recent gas and water Acts this power to convert loan capital into share capital is either taken away altogether, or taken away unless all dividends upon the shares or stock be limited to a rate not exceeding 5 per cent.

Standing Order 109 of the House of Lords provides: "In any Bill by which the profits of any company are limited, provision shall be made that the company shall not have power to raise the money by the Bill authorised to be borrowed on mortgage or any part thereof by the creation of shares or stock instead of borrowing or to convert into capital the amount borrowed under the provisions of the Bill, or any part thereof, unless in either case all dividends upon the shares or stock, whether ordinary or preferential, are limited to a rate not exceeding five pounds per centum per annum."

New shares to be considered same as original shares.

57. The capital so to be raised by the creation of new shares shall be considered as part of the general capital, and shall be subject to the same provisions in all respects, whether with reference to the payment of calls, or the forfeiture of shares on non-payment of calls, or otherwise, as if it had been part of the original capital, except as to the times of making calls for such additional capital, and the amount of such calls, which respectively it shall be lawful for the company from time to time to fix as they shall think fit.

If old shares at premium, new shares to be offered to the shareholders.

58. If at the time of any such augmentation of capital taking place by the creation of new shares the then existing shares be at a premium, or of greater actual value than the nominal value thereof, then, unless it be otherwise provided by the special Act, the sum so to be raised shall be divided into shares of such amount as will conveniently allow the same to be apportioned among the then shareholders in proportion to the existing shares held by them respectively; and such new shares shall be offered to the then shareholders in the proportion aforesaid; and such offer shall be made by letter under the hand of the secretary given to or sent by post, addressed to each shareholder, according to his address in the shareholders' address book, or left at his usual or last place of abode.

In cases where a special Act incorporates Part II. of the Companies Clauses Act, 1863 (26 & 27 Vict. c. 118), the above section will be superseded by s. 17 of that Act, which section contains the words "unless the company before the issue of the new shares or new stock otherwise determines." The effect of these words is to enable the company to issue new stock to the shareholders at a premium.

Shares to vest in the parties accepting; otherwise to be disposed of by the directors.

59. The said new shares shall vest in and belong to the shareholders who shall accept the same, and pay the value thereof to the company at the time and by the instalments which shall be fixed by the company; and if any shareholder fail for one month after such offer of new shares to accept the same, and pay the instalments called for in respect thereof, it shall be lawful for the company to dispose of such shares in such manner as they shall deem most for the advantage of the company.

If a shareholder from any cause allowed the day to pass over upon which he was to exercise his option of taking his shares, he used formerly to lose his right (*Sparks* v. *Liverpool Waterworks Co.* (1807), 13 Ves. 428; *Pearson* v. *London and Croydon Rail Co.* (1845), 14 Sim. 541; and *Campbell* v. *L. and B. Rail. Co.* (1846), 5 Hare, 519). But see now the Companies Clauses Act, 1863, s. 20, *post*, p. 1146.

Directors must not allocate these shares to themselves, but must dispose of them for the benefit of the company, for they are in the position of trustees (*York and North Midland Rail. Co.* v. *Hudson* (1853), 16 Beav. 485).

If not at a premium, to be issued as company think fit.

60. If at the time of such augmentation of capital taking place the existing shares be not at a premium, then such new shares may be of such amount, and may be issued in such manner and on such terms, as the company shall think fit.

See now the Act of 1863, s. 21, and notes thereto *post*, p. 1146, and Act of 1869, s. 5, *post*, p. 1155.

CONSOLIDATION OF SHARES.

And with respect to the consolidation of the shares into stock, be it enacted as follows:

Power to consolidate shares into stock.

61. It shall be lawful for the company from time to time, with the consent of three-fifths of the votes of the shareholders present in person or by proxy at any general meeting of the company, when due notice for that purpose shall have been given, to convert or consolidate all or any part of the shares then existing in the capital of the company, and in respect whereof the whole money subscribed shall have been paid up, into a general capital stock, to be divided amongst the shareholders according to their respective interests therein.

As to the difference between shares and stock, see *Morris* v. *Aylmer* (1875), L. R. 7 H. L. 717.

Proprietors of stock may transfer the same.

62. After such conversion or consolidation shall have taken place all the conditions contained in this or the special Act which require or imply that the capital of the company shall be divided into shares of any fixed amount, and distinguished by numbers, shall, as to so much of the capital as shall have been so converted or consolidated into stock, cease and be of no effect, and the several holders of such stock may thenceforth transfer their respective interests therein, or any parts of such interests, in the same manner and subject to the same regulations and provisions as or according to which any shares in the capital of the company might be transferred under the provisions of this or the special Act; and the company shall cause an entry to be made in some book, to be kept for that purpose, of every such transfer; and for every such entry they may demand any sum not exceeding the prescribed amount, or, if no amount be prescribed, a sum not exceeding two shillings and sixpence.

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Register of stock.

63. The company shall from time to time cause the names of the several parties who may be interested in any such stock as aforesaid, with the amount of the interest therein possessed by them respectively, to be entered in a book to be kept for the purpose, and to be called "The Register of Holders of Consolidated Stock"; and such book shall be accessible at all seasonable times to the several holders of shares or stock in the undertaking.

Proprietors of stock entitled to dividends.

64. The several holders of such stock shall be entitled to participate in the dividends and profits of the company, according to the amount of their respective interest in such stock; and such interests shall, in proportion to the amount thereof, confer on the holders thereof respectively the same privileges and advantages for the purpose of voting at meetings of the company, qualification for the office of directors, and for other purposes, as would have been conferred by shares of equal amount in the capital of the company, but so that none of such privileges or advantages, except the participation in the dividends and profits of the company, shall be conferred by any aliquot part of such amount of consolidated stock as would not, if existing in shares, have conferred such privileges or advantages respectively.

Application of capital.

65. And be it enacted, that all the money raised by the company, whether by subscriptions of the shareholders, or by loan or otherwise, shall be applied, firstly, in paying the costs and expenses incurred in obtaining the special Act, and all expenses incident thereto, and, secondly, in carrying the purposes of the company into execution.

Costs of obtaining special Act.

A member of a company may sue for his time, trouble and money expended in obtaining the special Act (*Carden* v. *General Cemetery Co.* (1839), 5 Bing. N. C. 253). See this case, commented on by WILLES, J., in *Lee* v. *Bude and Torrington Rail. Co.* (1871), L. R. 6 C. P. 576. See also *Tilson* v. *Warwick Gas Light Co.* (1825), 4 B. & C. 962; and *Hitchins* v. *Kilkenny Rail. Co.* (1850), 9 C. B. 536.

Usual clause as to costs and expenses.

Where one had agreed with the promoters of a railway Bill that he would bear the costs of obtaining and passing it, and the Bill having passed with the usual clause as to expenses, he thereupon brought an action against the company to recover for his work and labour and expenditure on and about the obtaining and passing the Bill; it was held he could not recover (*Savin* v. *Hoylake Rail. Co.* (1865), L. R. 1 Ex. 9). Where a solicitor induced persons to join as promoters by an assurance that they would incur no liability if the line was not made and the Act passed with the usual clause, but the line was not made and the company went into liquidation, the solicitor was allowed to prove for his costs on the ground that the assurances made by him could only operate as a contract to indemnify the individuals to whom they were made, and did not exonerate the company in its corporate capacity (*In re Brampton and Longtown Rail. Co.* (1875), L. R. 10 Ch. 177).

Where a Bill was promoted to construct six railways, and four of these were abandoned, and only two were authorised, the solicitor under the usual costs clause was held entitled to recover his costs in respect of all the six (*In re Tilleard* (1863), 32 L. J. Ch. 765). The special Act incorporating a tramway company provided that the costs, charges, and expenses of and incident to the preparing, applying for, obtaining and passing of the Act should be paid by the company. The Act was obtained by a parliamentary agent, who was employed by S., a person who had taken an active part in the promotion of the company, but who was not mentioned in the Bill or in the Act, and who never became a member of the company. After the company was incorporated, the parliamentary agent, either of his own accord or upon instructions from S., procured for the tramway company another Act, which contained a similar provision as to the payment of the costs, charges, and expenses of obtaining it. The seal of the company was affixed to the petition for this second Act, but without authority. The company never had any board of directors or body of shareholders capable of entering into a binding contract or of exercising any of the statutory powers, and it was ordered to be wound up shortly after the passing of the second Act:—*Held* (affirming the judgment of CHITTY, J.), that the parliamentary agent was not entitled to prove against the company in the winding-up in respect of the costs, charges, and expenses of either of the Acts. Those persons only who do work directly for a company in process of formation, without being employed by anyone else for hire or reward, are entitled to look to the company, when formed, for payment of the costs and expenses of the work of which the company has got the benefit, and those persons who are employed by anyone else to do the work for hire or reward must look to the person who employed them (*In re Skegness and St. Leonard's Tramway Co., Ex parte Hanly* (1888), 41 Ch. D. 215). The promoters of a railway company contracted with a landowner, being a peer of Parliament, to pay him £20,000 personally for his countenance and support in obtaining their Act, such sum to be independent of the ordinary payment for land, severance, and other usual compensation. After the passing of the Act the directors of the company, when formed, ratified the contract, but having doubts whether, under the Lands Clauses Act, the landowner was entitled to the money personally, they covenanted by deed to pay interest upon the amount, which was to be retained by the company or paid into court. A separate agreement stipulated for the quantity of land to be taken for the railway, and the amount to be paid by the company:—*Held*, that the original contract and the contract by the directors after the formation of the company, to pay a sum of money for countenance and support previously given in procuring the Act, were *ultra vires* of the company, and could not be enforced against the company as payment of expenses of obtaining the Act, under s. 65 of the Companies Clauses Act, or otherwise. The doctrine laid down by Lord COTTENHAM, that a company after formation is bound by the contracts of its promoters, disapproved of; and, so far as it applies to anything to be done which is *ultra vires* of the company, must be considered as overruled (*Earl of Shrewsbury* v. *North Staffordshire Rail. Co.* (1863), L. R. 1 Eq. 593; and see *Taylor* v. *Chichester and Midhurst Rail. Co.* (1870), L. R. 4 H. L. 628; and *Mann* v. *Edinburgh Northern Tramways Co.*, [1893] A. C. 69).

Parliamentary deposits.

As to parliamentary deposits and their application, see the Parliamentary Deposits and Bonds Act, 1892, and the following cases decided under it: *Ex parte Chambers*, [1893] 1 Ch. 47; *In re Colchester Tramways Co.*, [1893] 1 Ch. 309; *In re Manchester, Middleton, etc., Tramways Co.*, [1893] 2 Ch. 638; *In re Bradford, etc. Tramways Co.*, [1893] 3 Ch. 463; and *Turpin* v. *Somerton, etc. Tramway Co.*, [1900] W. N. 94; *In re Torrington and Okehampton Railway Bill*, [1907] 1 Ch. 186; and *In re Peckham, etc. Tramways Bill*, [1910] 2 Ch. 1.

Promotion of Bills for further powers.

As to whether the funds of a company may be expended in promoting Bills in Parliament to obtain further powers, see *Ware* v. *Grand Junction Waterworks Co.* (1831), 2 Russ. & My. 470; *In re L. C. & D. Railway Arrangement Act, Ex parte Hartridge and Allender* (1869), L. R. 5 Ch. 671, and the notes to Borough Funds Act, *ante*, p. 1027.

GENERAL MEETINGS.

And with respect to the general meetings of the company, and the exercise of the right of voting by the shareholders, be it enacted as follows:

Ordinary meetings to be held half-yearly.

66. The first general meeting of the shareholders of the company shall be held within the prescribed time, or if no time be prescribed within one month after the passing of the special Act, and the future general

Sect. 66. meetings shall be held at the prescribed periods, and if no periods be prescribed in the months of February and August in each year, or at such other stated periods as shall be appointed for that purpose by an order of a general meeting; and the meetings so appointed to be held as aforesaid shall be called "ordinary meetings"; and all meetings, whether ordinary or extraordinary, shall be held in the prescribed place, if any, and if no place be prescribed then at some place to be appointed by the directors.

At adjourned meetings the business of the former meeting only can be considered (*R.* v. *Grimshaw* (1847), 10 Q. B. 747). And no notice can be given of any further business to be transacted at such adjourned meeting. If such business is urgent an extraordinary meeting must be called, which, if due notice has been given, may be held at the same time and place as the adjourned meeting. Where notice of an adjourned meeting is necessary, it is not necessary in the notice to state the purpose for which it was summoned (*Scadding* v. *Lorant* (1851), 3 H. L. Cas. 418). The general rule as to adjournment of meetings is that notice of such adjournment is not requisite (*Kerr* v. *Wilkie* (1860), 6 Jur. (N.S.) 383; *Wills* v. *Murray* (1850), 4 Ex. 843).

Business at ordinary meetings.

67. No matters, except such as are appointed by this or the special Act to be done at an ordinary meeting, shall be transacted at any such meeting, unless special notice of such matters have been given in the advertisement convening such meeting.

This clause must be strictly observed, and if business be transacted and resolutions passed, of which no special notice has been given, they will be invalid. This applies equally to extraordinary meetings. See *In re the Vale of Neath and South Wales Brewery Joint Stock Co., Ex parte Lawes* (1852), 21 L. J. Ch. 688. But notices are not to be construed with excessive strictness, provided they give the shareholders adequate notice of what is intended to be done (*Wright's Case* (1868), L. R. 12 Eq. 334 n., 345 n., and *Isle of Wight Rail. Co.* v. *Tahourdin*, cited *post*, p. 1111).

As to advertisement, see s. 138, *post*, p. 1134.

Extraordinary meetings.

68. Every general meeting of the shareholders, other than an ordinary meeting, shall be called an "extraordinary meeting"; and such meetings may be convened by the directors at such times as they think fit.

Business at extraordinary meetings.

69. No extraordinary meeting shall enter upon any business not set forth in the notice upon which it shall have been convened.

Extraordinary meetings may be required by shareholders.

70. It shall be lawful for the prescribed number of shareholders, holding in the aggregate shares to the prescribed amount, or, where the number of shareholders or amount of shares shall not be prescribed, it shall be lawful for twenty or more shareholders holding in the aggregate not less than one-tenth of the capital of the company, by writing under their hands, at any time to require the directors to call an extraordinary meeting of the company; and such requisition shall fully express the object of the meeting required to be called, and shall be left at the office of the company, or given to at least three directors, or left at their last or usual places of abode; and forthwith upon the receipt of such requisition the directors shall convene a meeting of the shareholders; and if for twenty-one days after such notice the directors fail to call such meeting, the prescribed number, or such other number as aforesaid, of shareholders, qualified as aforesaid, may call such meeting, by giving fourteen days public notice thereof. **Sect. 70.**

A sufficient number of shareholders required the directors of a railway company to call a meeting of the company for the following objects: (1) To appoint a committee to inquire into the working and general management of the company, and the means of reducing the working expenses, to empower such committee to consolidate offices, to remove any of the officers and appoint others, and to authorise and require the directors to carry out the recommendations of the committee; (2) to remove, if deemed necessary or expedient, any of the present directors, and to elect directors to fill any vacancy in the board. The directors issued a notice for a meeting "for the purpose of considering and determining upon a demand of the requisitionists for the appointment of a committee to inquire into the working and general management of the company, and the means of reducing the working expenses." The requisitionists gave notice that they should not attend the meeting, as the notice did not provide for all their objects. They did not attend, and they themselves issued a notice under s. 70 calling a meeting for the purposes mentioned in their requisition. The directors brought an action in the name of the company to restrain the requisitionists from holding the meeting. KAY, J., decided as follows: (1) That everything in the first part of the requisition beyond the appointment of a committee was illegal, for that it proposed to transfer the powers of the directors to a committee, and that the directors were therefore justified in not entertaining the latter part of the first head of the requisition; (2) that the second head of the requisition was too vague, and did not "fully express the object of the meeting," and that the directors had no power to call a meeting for that purpose, whether a general meeting had power to remove directors or not; and (3) that the directors had not failed to call a meeting within the meaning of s. 70; that the power of the shareholders to call it had therefore not arisen; and that an injunction must be granted. On appeal this decision was reversed, and it was held—(1) that all the objects of the first part of the requisition were objects that could be carried out in a legal way, that the court will not restrain the holding of a meeting because the notice calling it is so expressed that consistently with its terms resolutions might be passed which would be *ultra vires*, and that the directors were not justified in excluding from their notice the objects in the first part of the requisition other than the appointment of a committee; (2) that under s. 91 a general meeting has power to remove directors, that a notice of a proposal to remove "any of the directors" was sufficiently distinct, that the general meeting could at all events fill up vacancies in the board if all the directors were removed or if the directors declined to exercise the power given by s. 89, and that the directors were therefore bound to include in their notice the objects mentioned in the second part of the requisition; and (3) that the requisitionists were therefore entitled to call a meeting, and that the injunction must be discharged (*Isle of Wight Rail. Co.* v. *Tahourdin* (1883), 25 Ch. D. 320).

Notice of meetings.

71. Fourteen days public notice at the least of all meetings, whether ordinary or extraordinary, shall be given by advertisement, which shall specify the place, the day, and the hour of meeting; and every notice of an extraordinary meeting, or of an ordinary meeting, if any other business than the business hereby or by the special Act appointed for ordinary meetings is to be done thereat, shall specify the purpose for which the meeting is called.

Fourteen days notice means fourteen clear days notice. See *In re Railway Sleepers Supply Co.* (1885), 29 Ch. D. 204; and *cf. R.* v. *Justices of Anglesey*, [1892] 1 Q. B. 850.

By a provisional agreement made between two companies for the sale of the undertaking of the one to the other, the purchasing company agreed to pay, in addition to the sum payable to the selling company, a substantial

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sum to the directors of the selling company as compensation for loss of office, and the agreement was made conditional upon its adoption by the shareholders of the selling company. The notice convening the meeting of shareholders to consider the agreement described it simply as an agreement for the sale of the undertaking. The selling company was governed by the Companies Clauses Act, 1845:—*Held,* (1) that the provision in favour of the directors did not render the agreement *ultra vires*, but (2) that the notice, by reason of its omission to refer to this provision, did not fairly disclose the purpose for which the meeting was convened, and did not comply with s. 71 of the Companies Clauses Act (*Kaye* v. *Croydon Tramways Co.*, [1898] 1 Ch. 358). The notice of an extraordinary general meeting must disclose all facts necessary to enable the shareholder receiving it to determine in his own interest whether or not he ought to attend the meeting; and pecuniary interest of a director in the matter of a special resolution to be proposed at the meeting is a material fact for this purpose (*Tiessen* v. *Henderson,* [1899] 1 Ch. 861, following *Kaye* v. *Croydon Tramways Co.*). The case of *Tiessen* v. *Henderson* also decided that a notice of two meetings to be held in immediate succession to consider *seriatim* two alternative resolutions, one at each meeting, is not rendered an invalid notice of the second meeting by an express provision that it will only be held in the event of the first resolution not being passed at the first meeting. See further *Hutton* v. *West Cork Rail. Co.* (1883), 23 Ch. D. 654, and *Southall* v. *British Mutual Life Assurance Society* (1871), L. R. 6 Ch. 614; and *cf. In re North of England Steamship Co.,* [1905] 2 Ch. 15, decided under s. 51 of the Companies Act, 1862; *Betts & Co., Ltd.* v. *Macnaghten,* [1909] 1 Ch. 430; and *Normandy* v. *Ind, Coope & Co.*, [1908] 1 Ch. 84. As to ratification of an unauthorised notice, see *Hooper* v. *Kerr, Stuart & Co., Ltd.* (1900), 83 L. T. 729.

Quorum for a general meeting.

72. In order to constitute a meeting (whether ordinary or extraordinary) there shall be present, either personally or by proxy, the prescribed quorum, and if no quorum be prescribed then shareholders holding in the aggregate not less than one-twentieth of the capital of the company, and being in number not less than one for every five hundred pounds of such required proportion of capital, unless such number would be more than twenty, in which case twenty shareholders holding not less than one-twentieth of the capital of the company shall be a quorum; and if within one hour from the time appointed for such meeting the said quorum be not present no business shall be transacted at the meeting, other than the declaring of a dividend, in case that shall be one of the objects of the meeting, but such meeting shall, except in the case of a meeting for the election of directors hereinafter mentioned, be held to be adjourned sine die.

If the number of shares issued represents less than the amount of capital required to be represented at a general meeting, no valid meeting can be held (*In re Skegness, etc. Co., ante,* p. 1109, at pp. 225, 237).

Chairman at general meetings.

73. At every meeting of the company one or other of the following persons shall preside as chairman; that is to say, the chairman of the directors, or in his absence the deputy chairman (if any), or, in the absence of the chairman and deputy chairman, some one of the directors of the company to be chosen for that purpose by the meeting, or, in the absence of the chairman and deputy chairman, and of all the directors, any shareholder to be chosen for that purpose by a majority of the shareholders present at such meeting.

Note.

As to the powers and duties of a chairman, see *National Dwellings Society* v. *Sykes*, [1894] 3 Ch. 159; *Salisbury Gold Mining Co.* v. *Hathorn*, [1897] A. C. 268; *In re Hadleigh Castle Gold Mines, Ltd.*, [1900] 2 Ch. 419; approved in *Arnot* v. *United African Lands, Ltd.*, [1901] 1 Ch. 518. *Cf. In re Caratal (New) Mines, Ltd.*, [1902] 2 Ch. 498.

74. The shareholders present at any such meeting shall proceed in the execution of the powers of the company with respect to the matters for which such meeting shall have been convened, and those only; and every such meeting may be adjourned from time to time, and from place to place; and no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which such adjournment took place.

Business at meetings and adjournments.

75. At all general meetings of the company every shareholder shall be entitled to vote according to the prescribed scale of voting, and where no scale shall be prescribed every shareholder shall have one vote for every share up to ten, and he shall have an additional vote for every five shares beyond the first ten shares held by him to one hundred, and an additional vote for every ten shares held by him beyond the first hundred shares: Provided always, that no shareholder shall be entitled to vote at any meeting unless he shall have paid all the calls then due upon the shares held by him.

Votes of shareholders.

76. The votes may be given either personally or by proxies, being shareholders, authorised by writing according to the form in the Schedule (F.) to this Act annexed, or in a form to the like effect, under the hand of the shareholder nominating such proxy, or if such shareholder be a corporation, then under their common seal; and every proposition at any such meeting shall be determined by the majority of votes of the parties present, including proxies, the chairman of the meeting being entitled to vote, not only as a principal and proxy, but to have a casting vote if there be an equality of votes.

Manner of voting.

The Companies Clauses Consolidation Act, 1888 (51 & 52 Vict. c. 48), s. 2, enacts that to this section the following words shall be added: "Provided that where the shareholder is [*a member of*] a body corporate, the proxy may be any member of such body, though not personally a shareholder in the company." By s. 3 the proxy of a corporation is to be taken to be a shareholder in the company, and by s. 4 special forms of proxy papers are prescribed. The words in brackets have since been repealed by the Companies Clauses Consolidation Act, 1889. See *post*, p. 1157.

The directors of a railway company, whose policy is attacked, are entitled to send out circulars, stamped proxy forms with the names of certain persons inserted therein as proxies, and stamped envelopes for return postage to shareholders, explaining their policy and asking for the shareholder's support at the ensuing meeting of the company, and to pay the costs thereof out of the funds of the company, if they honestly believe that their policy is for the benefit of the company. Such an expense is fairly and reasonably incidental to or consequential on the business expressly authorised by the Acts under which the company was incorporated (*Peel* v. *London and North Western Rail. Co.*, [1907] 1 Ch. 5).

77. No person shall be entitled to vote as a proxy unless the instrument appointing such proxy have been transmitted to the secretary of

Regulations as to proxies.

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By the Stamp Act, 1891 (54 & 55 Vict. c. 39), a letter of attorney for the sole purpose of appointing or authorising a proxy to vote at any one meeting at which votes may be given by proxy (whether the number of persons named in such instrument be one or more), is liable to the duty of one penny. By s. 80 of the same Act it is provided that:—

Provisions as to proxies and voting papers.

(1.) Every letter or power of attorney for the purpose of appointing a proxy to vote at a meeting, and every voting paper, hereby respectively charged with the duty of one penny, is to specify the day upon which the meeting at which it is intended to be used is to be held, and is to be available only at the meeting so specified, and any adjournment thereof.

(2.) The duty of one penny may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the instrument is executed, and a letter or power of attorney or voting paper charged with the duty of one penny is not to be stamped after the execution thereof by any person.

(3.) Every person who makes or executes, or votes or attempts to vote, under or by means of any such letter or power of attorney or voting paper, not being duly stamped, shall incur a fine of fifty pounds, and every vote given or tendered under the authority or by means of the letter or power of attorney or voting paper, shall be void.

See *In re English, Scottish, and Australian Chartered Bank*, [1893] 3 Ch. 385.

At a meeting of the shareholders of a company, the articles of which allow voting by proxy, the chairman, in ascertaining the number of votes given on a show of hands, must count the vote of each person who holds proxies as a single vote, and not count a vote for each of the members whose proxies he holds (*Ernest* v. *Loma Gold Mines, Ltd.*, [1897] 1 Ch. 1).

Provided a proxy be stamped with a penny stamp on execution, the date of execution and the date of the meeting at which it is to be used may be filled in afterwards by any person duly authorised by the giver of the proxy to do so; even though at the time of execution the date of the meeting has not been fixed (*Sadgrove* v. *Bryden*, [1907] 1 Ch. 318).

Votes of joint shareholders.

78. If several persons be jointly entitled to a share, the person whose name stands first in the register of shareholders as one of the holders of such share shall, for the purpose of voting at any meeting, be deemed the sole proprietor thereof; and on all occasions the vote of such first-named shareholder, either in person or by proxy, shall be allowed as the vote in respect of such share, without proof of the concurrence of the other holders thereof.

Votes of lunatics and minors, etc.

79. If any shareholder be a lunatic or idiot, such lunatic or idiot may vote by his committee; and if any shareholder be a minor he may vote by his guardian or any one of his guardians; and every such vote may be given either in person or by proxy.

Proof of a particular majority of votes only required in

80. Whenever in this or the special Act the consent of any particular majority of votes at any meeting of the company is required in order to authorise any proceeding of the company, such particular majority shall only be required to be proved in the event of a poll being demanded

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the event of a poll being demanded.

at such meeting; and if such poll be not demanded, then a declaration by the chairman that the resolution authorising such proceeeding has been carried, and an entry to that effect in the book of proceedings of the company shall be sufficient authority for such proceeding, without proof of the number or proportion of votes recorded in favour of or against the same.

As to an absolute majority at a meeting, see Rawlinson's Municipal Corporations Acts, 8th ed., p. 131 (notes), where the cases are collected. See also *R.* v. *Overseers of Christchurch* (1857), 7 E. & B. 409, where it was held that a majority must be a majority of the whole meeting; and, therefore, where thirty-five vestrymen were present at a meeting, and sixteen voted one way and eleven the other, while eight abstained from voting, the result was not an actual majority of those assembled. Where a special Act provided for something to be done "if a majority in value of the shareholders or of the shareholders of a particular class, as the case may be, by resolution passed at such meeting . . ." it was held that this meant the majority in value of all the shareholders of the company or of the particular class and not merely a majority in value of those present at the meeting (*Clay* v. *Grand Junction Waterworks Co.* (1904), 21 T. L. R. 31). As to proceedings on a poll being demanded, see *R.* v. *D'Oyly* (1840), 12 A. & E. 139; *In re Horbury Bridge Coal Co.* (1879), 11 Ch. D. 109; and *In re Chillington Iron Co.* (1885), 29 Ch. D. 159: *cf. In re Hadleigh Castle Gold Mines, Ltd.*, [1900] 2 Ch. 419; and *Arnott* v. *United African Lands, Ltd.*, [1901] 1 Ch. 518.

Appointment and Rotation of Directors.

And with respect to the appointment and rotation of directors, be it enacted as follows:

Number of directors.

81. The number of directors shall be the prescribed number.

Full number to be appointed.

A private Act of a company thereby incorporated enacted that "the business and concerns of the company shall be carried on under the management of twelve directors," five of whom were to be a quorum. There being only seven directors, and a call having been made, the Court of Common Pleas held that the call was lawfully made, the enactment as to the number of the directors being directory merely. Tindal, C.J., observed, "If any party is dissatisfied with the proceedings of the company because there is not the full number of directors, he may apply for a *mandamus* to have the number completed" (*Thames Haven Dock and Rail. Co.* v. *Rose* (1842), 4 M. & G. 552). But where it is provided that "the number of directors shall not be less than a certain number," then the provision is imperative (*Kirk* v. *Bell* (1851), 16 Q. B. 290; *In re Alma Spinning Co., Bottomley's Case* (1880), 16 Ch. D. 681; *York Tramways Co.* v. *Willows* (1882), 8 Q. B. D. 685).

Directors when trustees for the company.

A director of a company is not in the position of a trustee of his shares for the general body of shareholders, and under ordinary circumstances he may deal with them as freely as any other shareholder, provided he does not part with his qualification. But he is a trustee of his power of making calls for the general body of shareholders, and must not use it for his own benefit without regard to their interests (*In re National Provincial Marine Insurance Co., Gilbert's Case* (1870), L. R. 5 Ch. 559).

Directors are trustees for and agents of the company, and have all the authority given to partners at common law. They will be personally liable for any transaction which the body of shareholders could not sanction, and their private interest, when in conflict with their duty as directors, must yield (*Cameron's Coalbrook Steam Coal and Rail. Co., Ex parte Bennett* (1854), 18 Beav. 339; *Carter* v. *Horne* (1728), 1 Eq. Abr. 7; *Fawcett* v. *Whitehouse* (1829), 1 Russ. & M. 132; *Benson* v. *Heathorn* (1842), 1 Y. & Coll. C. C. 326;

Davidson v. *Tulloch* (1860), 3 Macq. H. L. Cas. 783). Directors are in the position not of servants, but of managers of the company. Apart therefore from contract or agreement they cannot claim remuneration for their services according to their value (*Dunston* v. *Imperial Gas Light Co.* (1832), 3 B. & Ad. 125).

Managing director.

A managing director of a company is not a "clerk or servant" within the meaning of the Preferential Payments in Bankruptcy Act, 1888 (51 & 52 Vict. c. 62), amended by 60 & 61 Vict. c. 19 (*In re Newspaper Proprietary Syndicate, Ltd., Hopkinson* v. *Newspaper Proprietary Syndicate, Ltd.*, [1900] 2 Ch. 349).

Payment of directors.

There is no general presumption that their fees are to be paid out of profits only. Where the articles of a company provided that the directors might yearly distribute among themselves, as remuneration for their services, such sum as should be equal to one-tenth part of the profits of the company for the last preceding year, provided always that there should be yearly distributed among such shareholders as such remuneration a sum which should not be less than £100 yearly for each director, and no profits were ever made by the company:—*Held*, reversing the decision of the Master of the Rolls, that the distribution of £100 per annum to each director out of capital was not illegal (*Lundy Granite Co., Harvey Lewis' Case* (1872), 26 L. T. 673). As to the remuneration of directors who were appointed receivers and managers, see *In re South Western of Venezuela* (*Barquisimeto*) *Rail. Co.*, [1902] 1 Ch. 701. Directors are the agents of the company (*Charitable Corporation* v. *Sutton* (1742), 2 Atk. 400). The company itself can only act through its directors (*Ferguson* v. *Wilson* (1866), L. R. 2 Ch. 77, 89). When a director enters into a contract with a company, he will be disqualified, but it does not follow that the contract is void. See cases cited *post*, p. 1117. In an action against a company on a debenture, reciting the borrowing of the money which it secured, it is no defence that there was not a resolution come to at a special general meeting authorising the directors to borrow under the provisions of the deed of settlement (*Agar* v. *Athenæum Life Assurance Society* (1858), 27 L. J. C. P. 95). See *Spackman* v. *Evans* (1868), L. R. 3 H. L. 171, 244; and *Royal British Bank* v. *Turquand* (1856), 6 E. & B. 327. But if any acts of directors are tainted with fraud they will not be binding on the company. An agreement between two companies, whereby the shareholders of one of them were limited and restricted in the exercise of their rights to elect directors, was held to be illegal and void (*James* v. *Eve* (1873), L. R. 6 H. L. 335).

Improper allotment to directors.

It being held that directors of a company had improperly allotted a large number of shares to themselves at an undervalue:—*Held*, that the directors must account to the company for the profits which they had derived from the sale of such of the shares thus allotted as they had disposed of, and that as to the shares which they retained the proper measure of the damages was, under the circumstances, not the highest price at which any share of the company had been sold during the period for which the directors had held their shares, but the market value of the shares at the dates at which they were respectively allotted to the directors, and that the directors must pay to the company the excess (if any) of that market value above the sums which they had paid to the company for the shares respectively (*Shaw* v. *Holland*, [1900] 2 Ch. 305). Where one person is an officer of two companies his personal knowledge is not necessarily the knowledge of both the companies *In re Hampshire Land Co.*, [1896] 2 Ch. 743).

Qualification and disqualification.

As to the qualification and disqualification of directors, see ss. 85 and 86.

Power to vary the number of directors.

82. Where the company shall be authorised by the special Act to increase or to reduce the number of the directors it shall be lawful for the company, from time to time, in general meeting, after due notice for that purpose, to increase or reduce the number of the directors within the prescribed limits, if any, and to determine the order of rotation in which such reduced or increased number shall go out of office, and what number shall be a quorum at their meetings.

Election of directors.

83. The directors appointed by the special Act shall, unless thereby otherwise provided, continue in office until the first ordinary meeting to be held in the year next after that in which the special Act shall have passed; and at such meeting the shareholders present, personally or by proxy, may either continue in office the directors appointed by the special Act, or any number of them, or may elect a new body of directors, or directors to supply the places of those not continued in office, the directors appointed by the special Act being eligible as members of such new body; and at the first ordinary meeting to be held every year thereafter the shareholders present, personally or by proxy, shall elect persons to supply the places of the directors then retiring from office, agreeably to the provisions hereinafter contained; and the several persons elected at at any such meeting, being neither removed nor disqualified, nor having resigned, shall continue to be directors until others are elected in their stead, as hereinafter mentioned.

Existing directors continued on failure of meeting for election of directors.

84. If at any meeting at which an election of directors ought to take place the prescribed quorum shall not be present within one hour from the time appointed for the meeting no election of directors shall be made, but such meeting shall stand adjourned to the following day at the same time and place; and if at the meeting so adjourned the prescribed quorum be not present within one hour from the time appointed for the meeting the existing directors shall continue to act and retain their powers until new directors be appointed at the first ordinary meeting of the following year.

Qualification of directors.

85. No person shall be capable of being a director unless he be a shareholder, nor unless he be possessed of the prescribed number, if any, of shares; and no person holding an office or place of trust or profit under the company, or interested in any contract with the company, shall be capable of being a director; and no director shall be capable of accepting any other office or place of trust or profit under the company, or of being interested in any contract with the company, during the time he shall be a director.

This section makes the holding of shares a condition precedent to the validity of an appointment to a directorship in any company under this Act (*Elham Valley Rail. Co., Biron's Case* (1878), 38 L. T. 401).

A contract between a company and one of its directors is not necessarily void; but the director would become disqualified. See *Foster* v. *Oxford, Worcester, and Wolverhampton Rail. Co.* (1853), 13 C. B. 200; but see *Aberdeen Rail. Co.* v. *Blaikie* (1853), 1 Macq. H. L. Cas. 461; *Flanagan* v. *G. W. Rail. Co.* (1868), L. R. 7 Eq. 116, and Lindley on Companies, 5th ed., 328.

Where articles of association provided that no person should be eligible as a director unless he held "as registered member in his own right capital of the nominal value of £500 at least," it was held by JESSEL, M.R., that beneficial ownership was not necessary for a qualification, and that a registered holder of the required capital though he had transferred his shares to another, was properly eligible (*Pulbrook* v. *Richmond Consolidated Mining Co.* (1878), 9 Ch. D. 610). See, however, observations of COTTON, L.J., in *Bainbridge* v.

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NOTE.

Smith (1889), 41 Ch. D., at p. 470, and of LINDLEY, L.J., at p. 474. Where certain shareholders of a company, in order to qualify a person as managing director, and with the knowledge and assent of the directors, transferred the requisite number of shares into his name on the register of the company, the transferors themselves retaining the beneficial ownership of the shares, and a judgment was afterwards recovered against the transferee, the Court of Appeal held, that the shares were not held by the judgment debtor "in his own right," so as to entitle the plaintiff to a charging order upon them under 1 & 2 Vict. c. 110, s. 4, and that the arrangement for qualifying the judgment debtor was not in any way illegal (*Cooper* v. *Griffin*, [1892] 1 Q. B. 741. See *per* Lord HERSCHELL, at p. 751). In the later case of *Howard* v. *Sadler*, [1823] 1 Q. B. 1, the cases of *Pulbrook* v. *Richmond Consolidated Mining Co.* and *Cooper* v. *Griffin*, were followed.

As to when a first director named in an Act, and not having had allotted to him or having acquired any shares, may be treated as a shareholder holding the number of shares necessary to qualify, see notes to s. 36, *ante*, p. 1096.

A trustee of a covering deed relating to debentures issued by a company, who was nominated and paid by the company, was held to be the holder of a place of profit under the company, and therefore incapable of acting as a director (*Astley* v. *New Tivoli, Ltd.*, [1899] 1 Ch. 151).

Cf. the provisions of the Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), ss. 72, 73, with regard to the appointment and qualification of directors.

As to cases where, in order to qualify as a director, a shareholder must hold the shares "in his own right," see *Boschoek Proprietary Co., Ltd.* v. *Fuke*, [1906] 1 Ch. 148.

Cases in which office of director shall become vacant.

86. If any of the directors at any time subsequently to his election accept or continue to hold any other office or place of trust or profit under the company, or be either directly or indirectly concerned in any contract with the company, or participate in any manner in the profits of any work to be done for the company, or if such director at any time cease to be a holder of the prescribed number of shares in the company, then in any of the cases aforesaid the office of such director shall become vacant, and thenceforth he shall cease from voting or acting as a director.

A member of a banking company, who were the bankers and treasurers of a railway company, was held not to be disqualified as a director by a section in a private Act, corresponding to the section in the text, as the section applied only to contracts made with the company in the prosecution of its enterprise (*Sheffield, Ashton-under-Lyne, etc. Rail. Co.* v. *Woodcock* (1841), 7 M. & W. 574). See s. 87.

As to the disabilities of the clergy with regard to trade and trading companies, see 1 & 2 Vict. c. 106, ss. 29—31, and 4 Vict. c. 14.

Shareholder of an incorporated joint stock company not disqualified by reason of contracts.

87. Provided always, that no person, being a shareholder or member of any incorporated joint stock company, shall be disqualified or prevented from acting as a director by reason of any contract entered into between such joint stock company and the company incorporated by the special Act; but no such director, being a shareholder or member of such joint stock company, shall vote on any question as to any contract with such joint stock company.

Rotation of directors.

88. The directors appointed by the special Act, and continued in office as aforesaid, or the directors elected to supply the places of those

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retiring as aforesaid, shall, subject to the provision hereinbefore contained for increasing or reducing the number of directors, retire from office at the times and in the proportions following, the individuals to retire being in each instance determined by ballot among the directors, unless they shall otherwise agree ; (that is say,)

At the end of the first year after the first election of directors the prescribed number, and if no number be prescribed one-third of such directors, to be determined by ballot among themselves, unless they shall otherwise agree, shall go out of office :

At the end of the second year the prescribed number, and if no number be prescribed one-half of the remaining number of such directors, to be determined in like manner, shall go out of office :

At the end of the third year the prescribed number, and if no number be prescribed the remainder of such directors, shall go out of office :

And in each instance the places of the retiring directors shall be supplied by an equal number of qualified shareholders ; and at the first ordinary meeting in every subsequent year the prescribed number, and if no number be prescribed one-third of the directors, being those who have been longest in office, shall go out of office, and their places shall be supplied in like manner ; nevertheless every director so retiring from office may be re-elected immediately or at any future time, and after such re-election shall, with reference to the going out by rotation, be considered as a new director: Provided always, that if the prescribed number of directors be some number not divisible by three, and the number of directors to retire be not prescribed, the directors shall in each case determine what number of directors, as nearly one-third as may be, shall go out of office, so that the whole number shall go out of office in three years.

Supply of occasional vacancies in office of directors.

89. If any director die, or resign, or become disqualified or incompetent to act as a director, or cease to be a director by any other cause than that of going out of office by rotation as aforesaid, the remaining directors, if they think proper so to do, may elect in his place some other shareholder, duly qualified, to be a director ; and the shareholder so elected to fill up any such vacancy shall continue in office as a director so long only as the person in whose place he shall have been elected would have been entitled to continue if he had remained in office.

POWERS OF DIRECTORS.

And with respect to the powers of the directors, and the powers of the company to be exercised only in general meeting, be it enacted as follows :

Powers of the company to be exercised

90. The directors shall have the management and superintendence of the affairs of the company, and they may lawfully exercise all the powers of the company, except as to such matters as are directed by

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this or the special Act to be transacted by a general meeting of the company; but all the powers so to be exercised shall be exercised in accordance with and subject to the provisions of this and the special Act; and the exercise of all such powers shall be subject also to the control and regulation of any general meeting specially convened for the purpose, but not so as to render invalid any act done by the directors prior to any resolution passed by such general meeting.

The directors must act in accordance with and subject to the provisions of their special Act, and must confine their proceedings to what is contemplated by the Act itself. They cannot deal in matters not ordinarily within the scope of the business of similar companies, or go to Parliament for increased powers and pledge the funds of the company for that purpose; neither can they issue new shares for the purpose; but if it be necessary to expend the moneys of the company in order to protect their property, this is within their powers, and they may oppose a Bill in Parliament, and use the moneys of the company for that purpose. See note, *ante*, p. 1027.

A director who, knowing the improper character of a proposed transaction, contents himself with protesting, and then does nothing more, stands in no better position than his fellows (*Joint Stock Discount Co.* v. *Brown* (1869), L. R. 8 Eq. 381, at p. 402). A director will be taken to know that which it was his duty to know for the performance of the trust he has undertaken by becoming director of the company (*Ex parte Brown* (1854), 19 Beav. 97, 104; *In re Esparto Trading Co.* (1879), 12 Ch. D. 191).

The first directors of a company have the same power as directors elected by the shareholders; they may therefore appoint one of their number to the office of manager at a salary, subject, of course, to the consequence that the person so appointed vacates his office of director (*Eales* v. *Cumberland Black Lead Mining Co.* (1861), 6 H. & N. 481).

A company carrying on business has power, by the vote of a general meeting, to expend a portion of its funds in gratuities to servants or directors, provided such grants are made for the purpose of advancing the interests of the company. Remuneration for past services of directors cannot be voted at an ordinary general meeting unless special notice be given of the intention to propose such a resolution (*Hutton* v. *West Cork Rail. Co.* (1883), 23 Ch. D. 654).

It is within the powers of directors to expend a portion of the funds of the company in giving gratuities to workmen in respect of work in a prosperous year (*Hampson* v. *Price's Patent Candle Co.* (1876), 45 L. J. Ch. 437). As to the right of promoters (as distinguished from directors) to make a profit out of a sale of property to the company, see *Erlanger* v. *New Sombrero Phosphate Co.* (1878), 3 App. Cas. 1218, and *Lagunas Nitrate Co.* v. *Lagunas Syndicate*, [1899] 2 Ch. 392.

Powers of the company not to be exercised by the directors.

91. Except as otherwise provided by the special Act, the following powers of the company (that is to say,) the choice and removal of the directors, except as hereinbefore mentioned, and the increasing or reducing of their number where authorised by the special Act, the choice of auditors, the determination as to the remuneration of the directors, auditors, treasurer, and secretary, the determination as to the amount of money to be borrowed on mortgage, the determination as to the augmentation of capital, and the declaration of dividends, shall be exercised only at a general meeting of the company.

A general meeting has power under this section to remove directors, and a notice of a proposal to remove "any of the directors" is sufficiently distinct (*Isle of Wight Rail. Co.* v. *Tahourdin* (1883), 25 Ch. D. 32, cited more fully, *ante*, p. 1111).

See further the notes to preceding section.

PROCEEDINGS OF DIRECTORS.

And with respect to the proceedings and liabilities of the directors, be it enacted as follows:

Meetings of directors.

92. The directors shall hold meetings at such times as they shall appoint for the purpose, and they may meet and adjourn as they think proper, from time to time, and from place to place; and at any time any two of the directors may require the secretary to call a meeting of the directors; and in order to constitute a meeting of directors there shall be at the least the prescribed quorum, and when no quorum shall be prescribed there shall be present at least one-third of the directors; and all questions at any such meeting shall be determined by the majority of votes of the directors present, and in case of an equal division of votes the chairman shall have a casting vote, in addition to his vote as one of the directors.

Directors exercising the powers conferred by this Act must act together, and as a board. The prescribed quorum of directors of a company being three, the secretary affixed the seal of the company to a bond after having obtained the written authority of two directors at a private interview, and at another private interview the verbal promise of a third to sign the authority. The company being sued upon the bond, the Court of Exchequer held that the seal of the company was in the circumstances affixed without authority, and that the company were therefore not liable on the bond (*D'Arcy* v. *Tamar, etc. Rail. Co.* (1867), L. R. 2 Ex. 158). In the later case of *In re Bonelli's Telegraph Co., Collie's Claim* (1871), L. R. 12 Eq. 246, a telegraph company, having resolved to sell their undertaking to the postmaster-general, a letter was addressed to C., authorising him to act as agent of the company in the transaction on certain terms, and the letter was signed by two directors, and afterwards it was signed by two other directors. This letter or agreement was not written or signed at any board meeting, but it was referred to at a later board meeting and not repudiated. It was held that though informal according to the internal regulations of the company, it was binding against the company in favour of a person dealing with them. See further s. 99, and *Mahony* v. *East Holyford Mining Co.* (1875), L. R. 7 H. L. 869; *Cook* v. *Ward* (1877), 2 C. P. D. 255; *Ex parte Kennedy* (1890), 44 Ch. D. 472; *Ex parte Overend and Gurney* (1869), L. R. 4 Ch. 460; and *In re County Life Assurance Society* (1870), L. R. 5 Ch. 288.

A quorum of directors means a quorum competent to transact and vote on the business of the board, and therefore a resolution passed at a meeting of three directors, two of whom were interested in the subject-matter of the resolution, was held invalid (*Greymouth Point Elizabeth Rail. and Coal Co., Ltd., In re, Yuill* v. *Greymouth Point Elizabeth Rail. and Coal Co., Ltd.*, [1904] 1 Ch. 32).

As to when insufficiency of notice calling meeting of directors will render void resolutions passed at such meeting, see *In re Homer District Consolidated Gold Mines, Ex parte Smith* (1888), 39 Ch. D. 546.

In a case under the Companies Act, 1862 (25 & 26 Vict. c. 89), it has been decided that the directors, being the select managing body, can at any meeting of the board deal with all affairs of the company then requiring attention, whether ordinary or not; and that previous notice of the special business is not a necessary condition of the proceedings being valid (*La Compagnie de Mayville* v. *Whitley*, [1896] 1 Ch. 788).

Permanent chairman of directors.

93. At the first meeting of directors held after the passing of the special Act, and at the first meeting of the directors held after each annual appointment of directors, the directors present at such meeting

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shall choose one of the directors to act as chairman of the directors for the year following such choice, and shall also, if they think fit, choose another director to act as deputy chairman for the same period; and if the chairman or deputy chairman die or resign, or cease to be a director, or otherwise become disqualified to act, the directors present at the meeting next after the occurrence of such vacancy shall choose some other of the directors to fill such vacancy; and every such chairman or deputy chairman so elected as last aforesaid shall continue in office so long only as the person in whose place he may be so elected would have been entitled to continue if such death, resignation, removal, or disqualification had not happened.

Occasional chairman of directors.

94. If at any meeting of the directors neither the chairman nor deputy chairman be present, the directors present shall choose some one of their number to be chairman of such meeting.

Committees of directors.

Powers of committees.

95. It shall be lawful for the directors to appoint one or more committees, consisting of such number of directors as they think fit, within the prescribed limits, if any, and they may grant to such committees respectively power on behalf of the company to do any acts relating to the affairs of the company which the directors could lawfully do, and which they shall from time to time think proper to entrust to them.

Where a board constituted by an Act of Parliament are authorised to delegate any of their powers to a committee, the powers so conferred upon the committee must be exercised by them acting in concert; and it is not competent to the committee to apportion among themselves the duties so delegated to them; and one of them acting alone, pursuant to such apportionment, cannot justify his acts under the Act of Parliament (*Cook* v. *Ward* (1877), 2 C. P. D. 255).

Meetings of committees.

96. The said committees may meet from time to time, and may adjourn from place to place, as they think proper, for carrying into effect the purposes of their appointment; and no such committee shall exercise the powers entrusted to them except at a meeting at which there shall be present the prescribed quorum, or if no quorum be prescribed then a quorum to be fixed for that purpose by the general body of directors; and at all meetings of the committees one of the members present shall be appointed chairman; and all questions at any meeting of the committee shall be determined by a majority of votes of the members present, and in case of an equal division of votes the chairman shall have a casting vote, in addition to his vote as a member of the committee.

Contracts by committee or directors, how to be entered into.

97. The power which may be granted to any such committee to make contracts, as well as the power of the directors to make contracts on behalf of the company, may lawfully be exercised as follows; (that is to say,)

With respect to any contract which, if made between private persons, would be by law required to be in writing, and under seal, such committee or the directors may make such contract on behalf of the company in writing, and under the common seal of the company, and in the same manner may vary or discharge the same : **Sect. 97.**

With respect to any contract which, if made between private persons, would be by law required to be in writing, and signed by the parties to be charged therewith, then such committee or the directors may make such contract on behalf of the company in writing, signed by such committee or any two of them, or any two of the directors, and in the same manner may vary or discharge the same :

With respect to any contract which, if made between private persons, would by law be valid although made by parol only, and not reduced into writing, such committee or the directors may make such contract on behalf of the company by parol only, without writing, and in the same manner may vary or discharge the same :

And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the company and their successors, and all other parties thereto, their heirs, executors, or administrators, as the case may be ; and on any default in the execution of any such contract, either by the company or any other party thereto, such actions or suits may be brought, either by or against the company, as might be brought had the same contracts been made between private persons only.

All signatures of directors should clearly appear to be written in that capacity by adding the word "directors."

As to the powers of corporations generally to enter into contracts, see *ante*, pp. 147 *et seq.*

Proceedings to be entered in a book, and to be evidence.

98. The directors shall cause notes, minutes, or copies, as the case may require, of all appointments made or contracts entered into by the directors, and of the orders and proceedings of all meetings of the company, and of the directors and committees of directors, to be duly entered in books, to be from time to time provided for the purpose, which shall be kept under the superintendence of the directors ; and every such entry shall be signed by the chairman of such meeting ; and such entry, so signed, shall be received as evidence in all courts, and before all judges, justices, and others, without proof of such respective meetings having been duly convened or held, or of the persons making or entering such orders or proceedings being shareholders or directors or members of committee respectively, or of the signature of the chairman, or of the fact of his having been chairman, all of which last-mentioned matters shall be presumed, until the contrary be proved.

It is sufficient for the chairman of one meeting to sign the minutes of the previous meeting (*Southampton Dock Co.* v. *Richards* (1840), 1 M. & G. 448). See *Hill* v. *Manchester and Salford Waterworks Co.* (1833), 5 B. & A. 866; *West London Rail. Co.* v. *Bernard* (1843), 3 Q. B. 873; *Sheffield, Ashton-under-Lyne, etc. Rail. Co.* v. *Woodcock* (1841), 7 M. & W. 574.

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Informalities in appointment of directors not to invalidate proceedings.

99. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding it may be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were or was disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

See *Royal British Bank* v. *Turquand* (1856), 6 E. & B. 327; *In re County Life Assurance Society* (1870), L. R. 5 Ch. 288; *Mahony* v. *East Holyford Mining Co.* (1875), L. R. 7 H. L. 869; *County of Gloucester Bank* v. *Rudry Merthyr, etc. Colliery Co.*, [1895] 1 Ch. 629; *In re Hampshire Land Co.*, [1896] 2 Ch. 743; and *Dawson* v. *African Consolidated Land and Trading Co.*, [1898] 1 Ch. 6.

Directors not to be personally liable.

100. No director, by being party to or executing in his capacity of director any contract or other instrument on behalf of the company, or otherwise lawfully executing any of the powers given to the directors, shall be subject to be sued or prosecuted, either individually or collectively, by any person whomsoever; and the bodies or goods or lands of the directors shall not be liable to execution of any legal process by reason of any contract or other instrument so entered into, signed, or executed by them, or by reason of any other lawful act done by them in the execution of any of their powers as directors; and the directors, their heirs, executors, and administrators, shall be indemnified out of the capital of the company for all payments made or liability incurred in respect of any acts done by them, and for all losses, costs, and damages which they may incur in the execution of the powers granted to them; and the directors for the time being of the company may apply the existing funds and capital of the company for the purposes of such indemnity, and may, if necessary for that purpose, make calls of the capital remaining unpaid, if any.

Indemnity of directors.

Where a railway company is promoting a Bill in Parliament, the directors are not entitled to be indemnified out of the capital of the company against the costs of promotion where the private Act of the company does not sanction the application of capital for such a purpose, even though three-fourths of the shareholders may have concurred in the resolution for the presentation of the Bill, and the same is presented in compliance with the Wharncliffe standing order (*Caledonian Rail. Co.* v. *Solway Junction Rail. Co.* (1883), 49 L. T. 526).

AUDITORS.

And with respect to the appointment and duties of auditors, be it enacted as follows:

Election of auditors.

101. Except where by the special Act auditors shall be directed to be appointed otherwise than by the company, the company shall, at the first ordinary meeting after the passing of the special Act, elect the prescribed number of auditors, and if no number is prescribed two auditors, in like manner as is provided for the election of auditors; and at the first ordinary meeting of the company in each year thereafter the company shall in like manner elect an auditor to supply the place of the auditor then retiring from office, according to the provision hereinafter contained; and every auditor elected as hereinbefore provided, being neither removed nor disqualified, nor having resigned, shall continue to be an auditor until another be elected in his stead.

In some recent Acts there is a section providing that the number of auditors shall be one unless the number be increased to two by order of a general meeting, and that such auditor or auditors shall be a member or members of the Institute of Chartered Accountants or of the Incorporated Society of Accountants and Auditors.

Many recent Acts enact that the auditors need not hold shares or stocks in the company.

Qualification of auditors.

102. Where no other qualification shall be prescribed by the special Act, every auditor shall have at least one share in the undertaking; and he shall not hold any office in the company, nor be in any other manner interested in its concerns, except as a shareholder.

This section is amended as to railways by 31 & 32 Vict. c. 119, s. 11.

Rotation of auditors.

103. One of such auditors (to be determined in the first instance by ballot between themselves, unless they shall otherwise agree, and afterwards by seniority) shall go out of office at the first ordinary meeting in each year; but the auditor so going out shall be immediately re-eligible, and after any such re-election shall, with respect to the going out of office by rotation, be deemed a new auditor.

Vacancies in office of auditor.

104. If any vacancy take place among the auditors in the course of the current year, then at any general meeting of the company the vacancy may, if the company think fit, be supplied by election of the shareholders.

Failure of meeting to elect auditor.

105. The provision of this Act respecting the failure of an ordinary meeting at which directors ought to be chosen shall apply, mutatis mutandis, to any ordinary meeting at which an auditor ought to be appointed.

Delivery of balance sheet, etc., by directors to auditors.

106. The directors shall deliver to such auditors the half-yearly or other periodical accounts and balance sheet, fourteen days at the least before the ensuing ordinary meeting at which the same are required to be produced to the shareholders as hereinafter provided.

Duty of auditors.

107. It shall be the duty of such auditors to receive from the directors the half-yearly or other periodical accounts and balance sheet required to be presented to the shareholders, and to examine the same.

Generally as to the duties of an auditor, see *Thomas* v. *Devonport Corporation*, [1900], 1 Q. B. 16, *per* Lord Russell of Killowen; *In re London and General Bank* (*No.* 2), [1895] 2 Ch. 673; *In re Kingston Cotton Mill Co.* (*No.* 2), [1896] 2 Ch. 279.

Powers of auditors.

108. It shall be lawful for the auditors to employ such accountants and other persons as they may think proper, at the expense of the company, and they shall either make a special report on the said accounts, or simply confirm the same; and such report or confirmation

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The power given by this section is conferred on each auditor. Where one of the auditors of a company employed an accountant against the wish of his co-auditor, and made a separate report on the accounts, it was held that he was entitled to do so, and to recover from the company the amount of the accountant's charges (*Steele* v. *Sutton Gas Co.* (1883), 12 Q. B. D. 68).

ACCOUNTABILITY OF OFFICERS.

And with respect to the accountability of the officers of the company, be it enacted as follows :

Security to be taken from officers intrusted with money.

109. Before any person intrusted with the custody or control of moneys, whether treasurer, collector, or other officer of the company, shall enter upon his office, the directors shall take sufficient security from him for the faithful execution of his office.

On a continuing guarantee for the honesty of a servant, if the master discovers that a servant has been guilty of dishonesty in the course of the service, and, instead of dismissing the servant, he chooses to continue him in his employ without the knowledge and consent of the surety, express or implied, he cannot afterwards have recourse to the surety to make good any loss which may arise from the dishonesty of the servant during the subsequent service (*Phillips* v. *Foxall* (1872), L. R. 7 Q. B. 666). Material alteration of the guaranteed contract may discharge the surety (*Sanderson* v. *Aston* (1873), L. R. 8 Ex. 73 ; *N. W. Rail. Co.* v. *Whinray* (1854), 10 Ex. 77 ; *Bonar* v. *MacDonald* (1850), 3 H. L. Cas. 226). As to when acquiescence in a collector's irregular mode of accounting will discharge a surety, see *Durham Corporation* v. *Fowler* (1888), 22 Q. B. D. 394. Where the defendants guaranteed that certain contractors would "well and truly" execute certain work, mere non-exercise of a right of superintendence was held insufficient to discharge them (*Hull Corporation* v. *Harding*, [1892] 2 Q. B. D. 494). When a bond was given conditioned for the due performance by A. of his duties as collector of poor rates and of the sewers rates for a certain parish, and an Act was afterwards passed which increased A.'s duties as collector of sewers rates, and under which he was also elected collector of main drainage rates by the persons under whom he held his other appointments, it was held that the bond was divisible, and that the facts referred to afforded no answer to the defendant's liability for A.'s breaches of duty as collector of poor rates (*Skillet* v. *Fletcher* (1867), L. R. 2 C. P. 469). For another instance, where the conditions in the bond were held to be divisible, see *Harrison* v. *Seymour* (1866), L. R. 1 C. P. 518.

Officers to account, on demand.

110. Every officer employed by the company shall from time to time, when required by the directors, make out and deliver to them, or to any person appointed by them for that purpose, a true and perfect account, in writing under his hand, of all moneys received by him on behalf of the company ; and such account shall state how, and to whom, and for what purpose such moneys shall have been disposed of ; and, together with such account, such officer shall deliver the vouchers and receipts for such payments ; and every such officer shall pay to the directors, or to any person appointed by them to receive the same, all moneys which shall appear to be owing from him upon the balance of such accounts.

Summary remedy

111. If any such officer fail to render such account, or to produce and deliver up all the vouchers and receipts relating to the same in his pos-

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against parties failing to account.

session or power, or to pay the balance thereof when thereunto required, or if for three days after being thereunto required he fail to deliver up to the directors, or to any person appointed by them to receive the same, all papers and writings, property, effects, matters and things, in his possession or power, relating to the execution of this or the special Act, or any Act incorporated therewith, or belonging to the company, then, on complaint thereof being made to a justice, such justice shall summon such officer to appear before two or more justices at a time and place to be set forth in such summons, to answer such charge; and upon the appearance of such officer, or in his absence, upon proof that such summons was personally served upon him, or left at his last known place of abode, such justices may hear and determine the matter in a summary way, and may adjust and declare the balance owing by such officer; and if it appear, either upon confession of such officer, or upon evidence, or upon inspection of the account, that any moneys of the company are in the hands of such officer, or owing by him to the company, such justices may order such officer to pay the same; and if he fail to pay the amount it shall be lawful for such justices to grant a warrant to levy the same by distress, or, in default thereof, to commit the offender to gaol, there to remain without bail for a period not exceeding three months, unless the same be sooner paid.

Officers refusing to deliver up documents, etc., to be imprisoned.

112. If any such officer refuse to make out such account in writing, or to produce and deliver to the justices the several vouchers and receipts relating thereto, or to deliver up any books, papers, or writings, property, effects, matters, or things, in his possession or power, belonging to the company, such justices may lawfully commit such offender to gaol, there to remain until he shall have delivered up all the vouchers and receipts, if any, in his possession or power, relating to such accounts, and have delivered up all books, papers, writings, property, effects, matters, and things, if any, in his possession or power, belonging to the company.

Where officer about to abscond, a warrant may be issued in the first instance.

113. Provided always, that if any director or other person acting on behalf of the company shall make oath that he has good reason to believe, upon grounds to be stated in his deposition, and does believe, that it is the intention of any such officer as aforesaid to abscond, it shall be lawful for the justice before whom the complaint is made, instead of issuing his summons, to issue his warrant for the bringing such officer before such two justices as aforesaid; but no person executing such warrant shall keeep such officer in custody longer than twenty-four hours without bringing him before some justice; and it shall be lawful for the justice before whom such officer may be brought either to discharge such officer, if he think there is no sufficient ground for his detention, or to order such officer to be detained in custody, so as to be brought before two justices, at a time and place to be named in such order, unless such officer give bail, to the satisfaction of such justice, for his appearance before such justices to answer the complaint of the company.

Sureties not to be discharged.

114. No such proceeding against or dealing with any such officer as aforesaid shall deprive the company of any remedy which they might otherwise have against such officer, or any surety of such officer.

ACCOUNTS.

And with respect to the keeping of accounts, and the right of inspection thereof by the shareholders, be it enacted as follows:

Accounts to be kept.

115. The directors shall cause full and true accounts to be kept of all sums of money received or expended on account of the company by the directors and all persons employed by or under them, and of the matters and things for which such sums of money shall have been received, or disbursed and paid.

Books to be balanced.

116. The books of the company shall be balanced at the prescribed periods, and if no periods be prescribed, fourteen days at least before each ordinary meeting: and forthwith on the books being so balanced an exact balance sheet shall be made up, which shall exhibit a true statement of the capital stock, credits, and property of every description belonging to the company, and the debts due by the company, at the date of making such balance sheet, and a distinct view of the profit or loss which shall have arisen on the transactions of the company in the course of the preceding half year; and previously to each ordinary meeting such balance sheet shall be examined by the directors, or any three of their number, and shall be signed by the chairman or deputy chairman of the directors.

Inspection of accounts by shareholders at stated times.

117. The books so balanced, together with such balance sheet as aforesaid, shall for the prescribed periods, and if no periods be prescribed, for fourteen days previous to each ordinary meeting, and for one month thereafter, be open for the inspection of the shareholders at the principal office or place of business of the company; but the shareholders shall not be entitled at any time, except during the periods aforesaid, to demand the inspection of such books, unless in virtue of a written order signed by three of the directors.

Balance sheet to be produced at the meeting.

118. The directors shall produce to the shareholders assembled at such ordinary meeting the said balance sheet, applicable to the period immediately preceding such meeting, together with the report of the auditors thereon, as hereinbefore provided.

Book-keeper to allow inspection of the accounts at the appointed times.

119. The directors shall appoint a book-keeper to enter the accounts aforesaid in books to be provided for the purpose; and every such book-keeper shall permit any shareholder to inspect such books, and to take copies or extracts therefrom, at any reasonable time during the prescribed periods, and if no periods be prescribed during one fortnight before and one month after every ordinary meeting; and if he fail to permit any such shareholder to inspect such books, or take copies or extracts therefrom, during the periods aforesaid, he shall forfeit to such shareholder for every such offence a sum not exceeding five pounds.

Where the inspection of the books of the company by a shareholder would cause inconvenience to the company, and might injure third parties, the court will not grant a writ of *mandamus* to compel the production of the books, unless the applicant discloses his object in seeking inspection, and shows the court that it is a reasonable and proper one (*R.* v. *London and St. Katherine's Dock Co.* (1875), 44 L. J. Q. B. 4). See *Davies* v. *Gas Light and Coke Co.*, cited *ante*, p. 1084.

DIVIDENDS.

And with respect to the making of dividends, be it enacted as follows:

Previously to declaration of dividends, a scheme to be prepared.

120. Previously to every ordinary meeting at which a dividend is intended to be declared the directors shall cause a scheme to be prepared, showing the profits, if any, of the company for the period current since the preceding ordinary meeting at which a dividend was declared, and apportioning the same, or so much thereof as they may consider applicable to the purposes of dividend, among the shareholders, according to the shares held by them respectively, the amount paid thereon, and the periods during which the same may have been paid, and shall exhibit such scheme at such ordinary meeting, and at such meeting a dividend may be declared according to such scheme.

In *Maughan* v. *Leamington Priors Gas Co.* (1866), 15 L. T. (N.S.) 437, it appeared that the defendant company had issued, under authority of their Act, certain A. shares, entitled to 10 per cent. maximum dividend, and certain B. shares, entitled to 7 per cent. maximum dividend. The profits for the year being sufficient to pay 10 per cent. on the A. shares and 7 per cent. on the B. shares, the shareholders passed a resolution authorising the payment of 8 per cent. on the A. shares and 7 per cent. on the B. shares. An amendment was proposed, but negatived, that the dividend should be 8 per cent. on the A. shares, and £5 12*s.* on the B. shares, which would be in the ratio of 10 to 7. Two shareholders filed a bill for a declaration that the dividends on the A. and B. shares respectively ought to be in proportion to the maximum rates of dividend, *i.e.*, as 10 to 7. WOOD, V.-C., refused the interference of the court, on the ground that there was no contract between the parties that the maximum rates of dividend should be 10 per cent. and 7 per cent. respectively. It is now usual to provide in special Acts for a proportionate reduction being made. See clause 11 of the Model Gas Bill, *ante*, p. 364.

By s. 14 of the Companies Clauses Act, 1863 (*post*, p. 1145), it is provided that preference shares or preference stock issued in accordance with that Act shall be entitled to the preferential dividend or interest assigned thereto out of the profits of each year in priority to the ordinary shares and ordinary stock of the company; "but if in any year ending on the day prescribed in the special Act, and if no day is prescribed then on the 31st December, there are not profits available for the payment of the full amount of preferential dividend or interest for that year, no part of the deficiency shall be made good out of the profits of any subsequent year, or out of any other funds of the company." Prior to the passing of this Act it had been held in several cases that preference shareholders were entitled to have deficiency of dividend made good out of the profits of subsequent years before any dividend could be paid to holders of ordinary shares (*Matthews* v. *G. N. Rail. Co.* (1859), 28 L. J. Ch. 375; *Crawford* v. *N. E. Rail. Co.* (1857), 3 K. & J. 723; *Henry* v. *G. N. Rail. Co.* (1857),

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NOTE.

1 De G. & J. 606; *Smith* v. *Cork and Bandon Rail. Co.* (1870), Ir. L. R. 3 Eq. 356; *ibid.*, 5 Eq. 65). In the case of preference shares not falling under the authority of the Companies Clauses Act, 1863, and in which there is no stipulation as to the payment of the dividend out of the profits of each particular year, these old cases are still good law (*Webb* v. *Earle* (1875), L. R. 20 Eq. 556; *Ashton Vale Iron Co.* v. *Abbot*, [1876] W. N. 119). *Cf. Staples* v. *Eastman Photographic Materials Co.*, [1896] 2 Ch. 303.

A tramway company, registered in 1885 under the Companies Acts, was dissolved and reincorporated by special Act in 1887. Preference shares in the new company were given in exchange to the old preference shareholders, whose rights were preserved. The old company's memorandum and articles of association did not define these rights, but the directors were empowered to give such preferential rights as they thought proper on issuing preference shares. They were entitled to a cumulative preference dividend, but not to priority as to capital. The company's special Act incorporated the Companies Clauses Consolidation Act, 1845, and Part I., but not Part II., of the Companies Clauses Act, 1863, but provided that any new shares should be issued subject to Part II. of the later Act, thereby making the new preference shares which were issued non-cumulative. In 1907 the company's undertaking was taken over by a public authority, and in 1908 the company was wound up under s. 199 of the Companies Act, 1862. Arrears of dividends on the preference shares for the years between 1890 and 1894 amounted to 13 per cent. The assets when realised were not sufficient to repay the capital in full. It was held that the preference shareholders were not entitled to their fixed preferential dividends, cumulative or non-cumulative, as such dividends had not been declared under s. 120 of the Companies Clauses Consolidation Act, 1845; that in the absence of any special provision, preference shareholders in a parliamentary company have no priority over ordinary shareholders as to repayment of capital; and that the assets must be distributed rateably among all the shareholders in proportion to their capital (*In re Accrington Corporation Steam Tramways Co.*, [1909] 2 Ch. 40). See also *Bond* v. *Barrow Hæmatite Steel Co.*, [1902] 1 Ch. 353, at p. 362; and *In re Crichton's Oil Co.*, [1902] 2 Ch. 86, 95, the decisions in which were applied in the *Accrington Co.'s Case, supra.*

As to when an injunction will be granted to restrain payment of unauthorised dividends, see *Bloxam* v. *Metropolitan Rail. Co.* (1868), L. R. 3 Ch. 337. Buying shares a short time before filing the bill and to enable the plaintiff to file the bill, is no reason for refusing relief (*ibid.*). As to what things fall under the head of "working expenses," see *In re Eastern and Midlands Rail. Co.*, [1890] 45 Ch. D. 367; and *In re Wrexham, Mold and Connah's Quay Rail. Co.*, [1900] 2 Ch. 436.

When a dividend is declared, the Statute of Limitations immediately begins to run (*In re Severn and Wye and Severn Bridge Rail. Co.*, [1896] 1 Ch. 559). As regards interest on debenture stock created under Part III. of the Companies Clauses Act, 1863, it has been held that the cause of action was statutory, and the period of limitation twenty years (*In re Cornwall Minerals Rail. Co.*, [1897] 2 Ch. 74).

Dividend not to be made so as to reduce capital.

121. The company shall not make any dividend whereby their capital stock will be in any degree reduced: Provided always, that the word "dividend" shall not be construed to apply to a return of any portion of the capital stock, with the consent of all the mortgagees and bond creditors of the company, due notice being given for that purpose at an extraordinary meeting to be convened for that object.

Power to directors to set apart a fund for contingencies.

122. Before apportioning the profits to be divided among the shareholders the directors may, if they think fit, set aside thereout such sums as they may think proper to meet contingencies, or for enlarging, repairing, or improving the works connected with the undertaking, or any part thereof, and may divide the balance only among the shareholders.

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There has been no judicial decision as to whether the powers of this section are, so far as gas and water companies are concerned, superseded and rendered inoperative by reason of the authorisation of a reserve fund limited to 10 per cent. on the nominal capital and (in the case of gas companies adopting the sliding scale) by reason of the provisions of the more modern legislation as to insurance fund and reserve fund, and of the still more modern legislation as to a special purposes fund and a new reserve fund. The purpose of the reserved fund under the Gasworks Clauses Act, 1847, s. 31, and the Waterworks Clauses Act, 1847, s. 75, is "to answer any deficiency which may at any time happen in the amount of divisible profits, or to meet any extraordinary claim or demand which may at any time arise against the undertakers." The purposes of the new gas funds, where the sliding scale is adopted, are explained at pp. 10 and 11, *ante*, and it will be observed that the scope of s. 122 is not identical with them. The object is "to meet contingencies or for enlarging, repairing or improving the works connected with the undertaking, or any part thereof." It appears to be the intention of the section that it should not operate on any money which the shareholders might not otherwise have lawfully divided. The clause in the Model Gas Bill (14), giving power to create a reserve fund, contemplates that no other fund in the nature of a reserve shall be made up. See *ante*, p. 364.

Dividend not to be paid unless all calls paid.

123. No dividend shall be paid in respect of any share until all calls then due in respect of that and every other share held by the person to whom such dividend may be payable shall have been paid.

BYELAWS.

And with respect to the making of byelaws, be it enacted as follows:

Power to make byelaws for the officers of the company.

124. It shall be lawful for the company from time to time to make such byelaws as they think fit, for the purpose of regulating the conduct of the officers and servants of the company, and for providing for the due management of the affairs of the company in all respects whatsoever, and from time to time to alter or repeal any such byelaws, and make others, provided such byelaws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect, or to the provisions of this or the special Act; and such byelaws shall be reduced into writing, and shall have affixed thereto the common seal of the company; and a copy of such byelaws shall be given to every officer and servant of the company affected thereby.

Fines for breach of such byelaws.

125. It shall be lawful for the company, by such byelaws, to impose such reasonable penalties upon all persons, being officers or servants of the company, offending against such byelaws, as the company think fit, not exceeding five pounds for any one offence.

Byelaws to be so framed as that penalties may be mitigated.

126. All the byelaws to be made by the company shall be so framed as to allow the justice before whom any penalty imposed thereby may be sought to be recovered to order a part only of such penalty to be paid if such justice shall think fit.

Evidence of byelaws.

127. The production of a written or printed copy of the byelaws of the company, having the common seal of the company affixed thereto,

Sect. 127. shall be sufficient evidence of such byelaws in all cases of prosecution under the same.

ARBITRATION.

And with respect to the settlement of disputes by arbitration, be it enacted as follows:

Appointment of arbitrator when questions are to be determined by arbitration.

128. When any dispute authorised or directed by this or the special Act, or any Act incorporated therewith, to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party shall by writing under his hand nominate and appoint an arbitrator to whom such dispute shall be referred; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as such revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute, and in such case the award or determination of such single arbitrator shall be final.

By the Arbitration Act, 1889 (52 & 53 Vict. c. 49), the law of arbitration generally is amended and consolidated. Sect. 24 of that Act provides that the Act shall apply to every arbitration under any Act passed before or after the commencement of the same as if the arbitration were pursuant to a submission, except in so far as the Act is inconsistent with the Act regulating the arbitration, or with any rules or procedure authorised or recognised by that Act.

In an action upon an award the arbitrator's evidence is admissible to show in respect of what matters he allowed or refused compensation, but not to explain his reasons for awarding a particular sum in respect of any particular matter (*Buccleuch* (*Duke*) v. *Metropolitan B. of W.* (1871), L. R. 5 H. L. 418).

Vacancy of arbitrator to be supplied.

129. If before the matters so referred shall be determined any arbitrator appointed by either party die, or become incapable or refuse or for seven days neglect to act as arbitrator, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place; and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so the remaining or other arbitrator may proceed ex parte; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorites as were vested in the former arbitrator at the time of such his death, refusal, or disability as aforesaid.

Appointment of umpire.

130. When more than one arbitrator shall have been appointed such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ; and if such umpire shall die, or refuse or for seven days neglect to act, they shall forthwith after such death, refusal, or neglect appoint another umpire in his place; and the decision of every such umpire on the matters so referred to him shall be final.

So far as this Act goes there is no provision for the appointment of an umpire in case the arbitrators cannot agree upon one, except by s. 131, where a railway company is a party to the arbitration. But under the Arbitration Act, 1889 (52 & 53 Vict. c. 49) (which applies to references under statutory powers (s. 24)), the court or a judge may appoint an umpire (s. 5).

Board of Trade empowered to appoint an umpire, on neglect of the arbitrators in case of railway companies.

131. If in either of the cases aforesaid the said arbitrators shall refuse, or shall for seven days after request of either party to such arbitration neglect to appoint an umpire, it shall be lawful for the Board of Trade, if they think fit, in any case in which a railway company shall be one party to the arbitration, on the application of either party to such arbitration, to appoint an umpire; and the decision of such umpire on the matters on which the arbitrators shall differ shall be final.

Power of arbitrators to call for books, etc.

132. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

Costs to be in the discretion of the arbitrators.

133. Except where by this or the special Act, or any Act incorporated therewith, it shall be otherwise provided, the costs of and attending every such arbitration to be determined by the arbitrators shall be in the discretion of the arbitrators or their umpires, as the case may be.

Submission to arbitration to be made rule of court.

134. The submission to any such arbitration may be made a rule of any of the superior courts, on the application of either of the parties.

NOTICES.

And with respect to the giving of notices, be it enacted as follows:

Service of notice upon company.

135. Any summons or notice, or any writ, or other proceeding, at law or in equity, requiring to be served upon the company, may be served by the same being left at, or transmitted through the post directed to the principal office of the company, or one of their principal offices where there shall be more than one, or being given personally to the secretary, or in case there be no secretary then by being given to any one director of the company.

Service by company on shareholders.

136. Notices requiring to be served by the company upon the shareholders may, unless expressly required to be served personally, be served by the same being transmitted through the post directed according to the registered address or other known address of the shareholder, within such period as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the giving of such notice; and in proving such service it shall be sufficient to prove that such notice was properly directed, and that it was so put into the post office.

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Notices to joint proprietors of shares.

137. All notices directed to be given to the shareholders shall, with respect to any share to which persons are jointly entitled, be given to whichever of the said persons shall be named first in the register of shareholders; and notice so given shall be sufficient notice to all the proprietors of such share.

Notices by advertisement.

138. All notices required by this or the special Act or any Act incorporated therewith to be given by advertisement, shall be advertised in the prescribed newspaper, or if no newspaper be prescribed, or if the prescribed newspaper cease to be published, in a newspaper circulating in the district within which the company's principal place of business shall be situated.

See ss. 67 and 71 as to notices of meetings being given by advertisement.

Authentication of notices.

139. Every summons, notice, or other such document requiring authentication by the company, may be signed by two directors, or by the treasurer or the secretary of the company, and need not be under the common seal of the company, and the same may be in writing or in print, or partly in writing and partly in print.

Proof of debts in bankruptcy.

140. And be it enacted, that if any person against whom the company shall have any claim or demand become bankrupt, or take the benefit of any Act for the relief of insolvent debtors, it shall be lawful for the secretary or treasurer of the company, in all proceedings against the estate of such bankrupt or insolvent, or under any fiat, sequestration, or act of insolvency against such bankrupt or insolvent, to represent the company, and act on their behalf, in all respects as if such claim or demand had been the claim or demand of such secretary or treasurer, and not of the company.

141. [*Tender of Amends.*]

This section has been repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56). As to this repeal, see the note to s. 39 of the Gasworks Clauses Act, 1847, *ante*, p. 213.

RECOVERY OF DAMAGES AND PENALTIES.

And with respect to the recovery of damages not specially provided for, and penalties, be it enacted as follows:

Provision for damages not otherwise provided for.

142. In all cases where any damages, costs, or expenses are by this or the special Act, or any Act incorporated therewith, directed to be paid, and the method of ascertaining the amount or enforcing the payment thereof is not provided for, such amount, in case of dispute, shall be ascertained and determined by two justices; and if the amount so ascertained be not paid by the company or other party liable to pay the same within seven days after demand, the amount may be recovered by distress of the goods of the company or either party liable as aforesaid; and the justices by whom the same shall have been ordered to be paid, or either of them, on application, shall issue their or his warrant accordingly.

143. If sufficient goods of the company cannot be found whereon to levy such damages, costs or expenses payable by the company, the same may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the company; and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence; and if such treasurer pay any money under such stress as aforesaid, he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the company coming into his custody or control, or he may sue the company for the same.

Sect. 143.

Distress against the treasurer.

144. Where in this or the special Act, or any Act incorporated therewith, any question of compensation, expenses, charges, or damages is referred to the determination of any one justice, or more, it shall be lawful for any justice, upon the application of either party, to summon the other party to appear before one justice, or before two justices, as the case may require, at a time and place to be named in such summons; and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such one justice or such two justices, as the case may be, to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, on oath; and the costs of every such inquiry shall be in the discretion of such justices, and they shall determine the amount thereof.

Method of proceeding before justices in questions of damages, etc.

145. The company shall publish the short particulars of the several offences for which any penalty is imposed by this or the special Act, or any Act incorporated therewith, or by any byelaw of the company affecting other persons than the shareholders, officers or servants of the company, and of the amount of every such penalty, and shall cause such particulars to be painted on a board, or printed upon paper and pasted thereon, and shall cause such board to be hung up or affixed on some conspicuous part of the principal place of business of the company, and where any such penalties are of local application shall cause such boards to be affixed in some conspicuous place in the immediate neighbourhood to which such penalties are applicable or have reference; and such particulars shall be renewed as often as the same or any part thereof is obliterated or destroyed; and no such penalty shall be recoverable unless it shall have been published and kept published in the manner hereinbefore required.

Publication of penalties.

146. If any person pull down or injure any board put up or affixed as required by this or the special Act, or any Act incorporated therewith, for the purpose of publishing any byelaw or penalty, or shall obliterate any of the letters or figures thereon, he shall forfeit for every such offence a sum not exceeding five pounds, and shall defray the expenses attending the restoration of such board.

Penalty for defacing boards used for such publication.

Sect. 147.

Penalties to be summarily recovered before two justices.

147. Every penalty or forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any byelaw made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices. . . .

By the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), s. 3, and schedule, the omitted portion of this section, and ss. 148, 149, 153, 155, so far as relates to any matter to which the Summary Jurisdiction Acts apply), 157, 159 (in part), and Schedule G., are repealed as regards England, and it is provided (s. 5) that ss. 19 & 21 of the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), as amended by s. 21 of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), with regard to the recovery of penalties, shall apply. The Summary Jurisdiction Act, 1884, further provides (s. 5) :

> Where by virtue of the repeal enacted by this Act or otherwise any statute authorising the infliction by any justice or justices of a penalty or fine, either as a sole punishment or as an alternative punishment for imprisonment, provides no method for the recovery of such penalty or fine, sections nineteen and twenty-one of the Summary Jurisdiction Act, 1848, as amended by section twenty-one of the Summary Jurisdiction Act, 1879, shall apply to the recovery of such penalty or fine.

By the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19), the omitted portion of s. 147, as well as ss. 148, 149, 153, 157 and Schedule G., are repealed without qualification.

As to Scotland, the corresponding sections of the Companies Clauses Consolidation (Scotland) Act, 1845 (8 & 9 Vict. c. 17), have been repealed, and the procedure is now taken under the Summary Jurisdiction (Scotland) Act, 1908. In Ireland, the procedure is under the Summary Jurisdiction (Ireland) Acts, as defined by the Interpretation Act, 1889, s. 13 (9).

148. [*Penalties may be levied by distress.*]

Repealed. See note to preceding section.

149. [*Imprisonment in default of distress.*]

Repealed. See note to s. 147.

Distress, how to be levied.

150. Where in this or the special Act, or any Act incorporated therewith, any sum of money, whether in the nature of penalty or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same ; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money, and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

Distress not unlawful for want of form.

151. No distress levied by virtue of this or the special Act, or any Act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser ab initio on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

Application of penalties.

152. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one-half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, for the benefit of the poor of such parish ; . . .

Sect. 152.

Certain words omitted from this section are repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

153. [*Penalties to be sued for within six months.*]

Repealed. See note to s. 147.

Damage to be made good in addition to penalty.

154. If, through any act, neglect, or default, on account whereof any person shall have incurred any penalty imposed by this or the special Act, or any Act incorporated therewith, any damage to the property of the company shall have been committed by such person, he shall be liable to make good such damage as well as to pay such penalty ; and the amount of such damages shall, in case of dispute, be determined by the justices by whom the party incurring such penalty shall have been convicted, and on non-payment of such damages, on demand, the same shall be levied by distress, and such justices, or one of them, shall issue their or his warrant accordingly.

Penalty on witnesses making default.

155. [*It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction, under the provisions of this or the special Act, or any Act incorporated therewith, at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter ; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence.*]

Repealed so far as relates to any matter to which the Summary Jurisdiction Acts apply. See note to s. 147.

Transient offenders.

156. It shall be lawful for any officer or agent of the company, and all persons called by him to his assistance, to seize and detain any person who shall have committed any offence against the provisions of this or the special Act, or any Act incorporated therewith, and whose name and residence shall be unknown to such officer or agent, and convey him, with all convenient despatch, before some justice without any warrant or other authority than this or the special Act ; and such justice shall proceed with all convenient despatch to the hearing and determining of the complaint against such offender.

157. [*Form of conviction.*]

Repealed. See note to s. 147, *ante*, p. 1136.

Proceedings not to be quashed for want of form.

158. No proceeding in pursuance of this or the special Act, or any Act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by certiorari or otherwise into any of the superior courts.

Sect. 159.

APPEAL.

Parties allowed to appeal to quarter sessions, on giving security.

159. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special Act, or any Act incorporated therewith, such party may appeal to the general quarter sessions [*for the county or place in which the cause of appeal shall have arisen; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such notice enter into recognizances, with two sufficient sureties, before a justice, conditioned duly to prosecute such appeal, and to abide the order of the court thereon.*]

The words in italics repealed as regards England by 47 & 48 Vict. c. 43. See note to s. 147, *ante*, p. 1136.

Court to make such order as they think reasonable.

160. At the quarter sessions for which such notice shall be given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

ACCESS TO SPECIAL ACT.

And with respect to the provision to be made for affording access to the special Act by all parties interested, be it enacted as follows:

Copies of special Act to be kept and deposited, and allowed to be inspected.

161. The company shall, at all times after the expiration of six months after the passing of the special Act, keep in their principal office of business a copy of the special Act, printed by the printers to her Majesty, or some of them; and where the undertaking shall be a railway, canal, or other like undertaking, the works of which shall not be confined to one town or place, shall also, within the space of such six months, deposit in the office of each of the clerks of the peace of the several counties into which the works shall extend, and in the office of the town clerk of every burgh or city into which or within one mile of which the works shall extend, a copy of such special Act, so printed as aforesaid; and the said clerks of the peace and town clerks shall receive, and they and the company respectively shall retain, the said copies of the special Act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner and upon the like terms and under the like penalty for default as is provided in the case of certain plans and sections by an Act passed in the first year of the reign of her present Majesty, intituled "An Act

7 Will. 4 & 1 Vict. c. 83.

to compel clerks of the peace for counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament."

See the provisions of 7 Will. 4 & 1 Vict. c. 83, *ante*, p. 432.

Penalty on company failing to keep or deposit such copies.

162. If the company shall fail to keep or deposit as hereinbefore mentioned any of the said copies of the special Act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

Act not to extend to Scotland.

163. And be it enacted that this Act shall not extend to Scotland.

The Companies Clauses Consolidation (Scotland) Act, 1845 (8 & 9 Vict. c. 17), is, *mutatis mutandis*, similar to this Act. See note to s. 147, *ante*, p. 1136.

For recovering calls against shareholders residing in Scotland.

164. Provided always, . . . that if any shareholder residing in Scotland shall fail to pay the amount of any call made upon him by the company in respect of any share held by him, it shall be lawful for the company to proceed against him in Scotland, and to sue for and recover the amount of such call, or to declare such share forfeited, in such manner as is by the Companies Clauses Consolidation (Scotland) Act, 1845, . . . provided in regard to shareholders of any company in Scotland.

Certain words omitted from this section are repealed partly by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66), and partly by the Statute Law Revision Act, 1891 (54 & 55 Vict. c. 67).

165. [*Act may be amended, etc.*]

Repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

SCHEDULES REFERRED TO IN THE FOREGOING ACT.

SCHEDULE (A.).

FORM OF CERTIFICATE OF SHARE.

"The Company."

Number .

This is to certify, that A. B., of , is the proprietor of the share number of "The Company," subject to the regulations of the said company. Given under the common seal of the said company the day of in the year of our Lord .

SCHEDULE (B.).

FORM OF TRANSFER OF SHARES OR STOCK.

I of in consideration of the sum of paid to me by of do hereby transfer to the said share [*or* shares], numbered in the undertaking called "The Company" [*or* pounds consolidated stock in the undertaking called "The Company," standing (*or*

Schedule (B.). part of the stock standing) in my name in the books of the company], to hold unto the said his executors, administrators, and assigns [*or* successors and assigns], subject to the several conditions on which I held the same at the time of the execution hereof; and I the said do hereby agree to take the said share [*or* shares] [*or* stock], subject to the same conditions. As witness our hands and seals, the day of .

SCHEDULE (C.).

FORM OF MORTGAGE DEED.

"The Company."

Mortgage, Number £ .

By virtue of [*here name the special Act*], we, "The Company," in consideration of the sum of pounds paid to us by A. B. of do assign unto the said A. B., his executors, administrators, and assigns, the said undertaking [and (*in case such loan shall be in anticipation of the capital authorised to be raised*) all future calls on shareholders], and all the tolls and sums of money arising by virtue of the said Act, and all the estate, right, title and interest of the company in the same, to hold unto the said A. B., his executors, administrators, and assigns, until the said sum of pounds, together with interest for the same at the rate of for every one hundred pounds by the year, be satisfied [the principal sum to be repaid at the end of years from the date hereof (*in case any period be agreed upon for that purpose*)], [at *or any place of payment other than the principal office of the company*]. Given under our common seal, this day of in the year of our Lord .

SCHEDULE (D.).

FORM OF BOND.

"The Company."

Bond, Number £ .

By virtue of [*here name the special Act*], we, "The Company," in consideration of the sum of pounds to us in hand paid by A. B. of do bind ourselves and our successors unto the said A. B., his executors, administrators, and assigns, in the penal sum of pounds.

The condition of the above obligation is such, that if the said company shall pay to the said A. B., his executors, administrators, or assigns [at (*in case any other place of payment than the principal office of the company be intended*)], on the day of which will be in the year one thousand eight hundred and the principal sum of pounds, together with interest for the same at the rate of pounds per centum per annum, payable half-yearly on the day of and day of then the above-written obligation is to become void, otherwise to remain in full force, given under our common seal, this day of one thousand eight hundred and .

SCHEDULE (E.).

Schedule (E.).

FORM OF TRANSFER OF MORTGAGE OR BOND.

I, A. B., of in consideration of the sum of paid to me by G. H. of do hereby transfer to the said G. H., his executors, administrators. and assigns, a certain bond [*or* mortgage] number made by "The Company" to , bearing date the day of for securing the sum of and interest [*or, if such transfer be by endorsement,* the within security], and all my right, estate, and interest in and to the money thereby secured [*and if the transfer be of a mortgage,* and in and to the tolls, money, and property thereby assigned]. In witness whereof I have hereunto set my hand and seal, this day of one thousand eight hundred and .

SCHEDULE (F.).

FORM OF PROXY.

A. B. , one of the proprietors of "The Company," doth hereby appoint C. D. of to be the proxy of the said A. B., in his absence to vote in his name upon any matter relating to the undertaking proposed at the meeting of the proprietors of the said company to be held on the day of next, in such manner as he the said C. D. doth think proper. In witness whereof the said A. B. hath hereunto set his hand [*or, if a corporation, say,* the common seal of the corporation], the day of one thousand eight hundred and .

SCHEDULE (G.).

FORM OF CONVICTION.

(*Repealed. See note to s.* 147, *ante,* p. 1136.)

COMPANIES CLAUSES ACT, 1863.

(26 & 27 VICT. c. 118.)

An Act for consolidating in One Act certain Provisions frequently inserted in Acts relating to the Constitution and management of Companies incorporated for carrying on Undertakings of a public nature.

[28th July, 1863.]

8 & 9 Vict. cc. 16 and 17.

WHEREAS the Companies Clauses Consolidation Act, 1845, and the Companies Clauses Consolidation (Scotland) Act, 1845, respectively, were passed in order to comprise in one general Act such provisious relating to the constitution and management of joint stock companies incorporated for the purpose of carrying on undertakings of a public nature in England or Ireland, or in Scotland, respectively, as were at the times of the passing of those Acts usually introduced into Acts of Parliament relating to such companies:

And whereas sundry provisions of the like nature, but not comprised in the said general Acts respectively, are now frequently introduced into Acts of Parliament relating to such companies; and it is expedient to comprise such last-mentioned provisions also in one general Act, such Act to be applicable to England or Ireland, or to Scotland, as the case may require, and that as well for the purpose of avoiding the necessity of repeating such provisions in the Acts relating to such undertakings, as for ensuring greater uniformity in the provisions themselves.

. . . . .

A formal part of the preamble is repealed by the Statute Law Revision Act, 1893 (56 & 57 Vict. c. 14).

Short title.

1. This Act may be cited as the Companies Clauses Act, 1863.

Division of Act into parts.

2. This Act shall be deemed to be divided into four parts, as follows:

Part I. relating to cancellation and surrender of shares;

Part II. relating to additional capital;

Part III. relating to debenture stock;

Part IV. relating to change of name.

PART I.

CANCELLATION AND SURRENDER OF SHARES.

Application of Part I.

3. This part of this Act shall apply to every company incorporated either before or after the passing of this Act which obtains a special Act incorporating this part of this Act.

Power to company to

4. Where any share of the capital of the company is after the passing of this Act declared forfeited under and in pursuance of the provisions with respect to the forfeiture of shares for non-payment of calls contained in the Companies Clauses Consolidation Act, 1845, and the Companies Clauses Consolidation (Scotland) Act, 1845, respectively, and the forfeiture is confirmed by a meeting in accordance with the same provisions respectively, and notice of the forfeiture has been given,—then and in every such case, if the directors of the company are unable to sell the share for a sum equal to the arrears of calls and interest and expenses due in respect thereof, the company at any general meeting held not less than two months after such notice is given may, in case payment of the arrears of calls, interest, and expenses due in respect thereof is not made by the registered holder of the share before the meeting is held, resolve that the share instead of being sold, shall be cancelled; and the share shall thereupon be cancelled accordingly.

Sect. 4. — cancel forfeited shares.

5. A declaration in writing made by some credible person, in England or Ireland before a justice, and in Scotland before any sheriff or justice, stating that a sum of money sufficient to pay the arrears of calls, interest, and expenses due in respect of the share, could not at the time of the cancellation of the share be obtained for the same upon the stock exchange prescribed in the special Act, and, if no stock exchange is prescribed then upon the stock exchange, as to England, of the city of London, and as to Scotland, of the city of Edinburgh, and as to Ireland, of the city of Dublin, shall be sufficient evidence of the fact so declared.

Evidence for cancellation of forfeited shares.

6. Where it is so resolved that any share shall be cancelled, the holder thereof shall from and after the passing of the resolution be precluded from all right and interest therein and in respect thereof; but the cancellation shall not affect the liability of the last registered holder of the share to pay to the company all arrears of calls, interest, and expenses due in respect of the share at the time of the cancellation, or the power of the company to enforce payment thereof by action or otherwise.

Payment of calls in arrear notwithstanding cancellation.

7. Provided always, that if the company enforces the payment of the arrears of calls, interest, and expenses under the last preceding provision, the value of the share at the time of the cancellation thereof shall be deducted from the amount so then due: Provided also, that if payment of all arrears of calls, interest, and expenses is made before such meeting as aforesaid is held, the share shall revert to the person to whom it belonged at the time of forfeiture, and shall be re-entered on the company's register accordingly.

Value of forfeited shares to be deducted from amount due in respect thereof.

8. Where any share is declared forfeited, or where any sum payable on any share remains unpaid, the company, with the consent in writing of the registered holder of the share, and with the sanction of a general meeting, may resolve that the share shall be cancelled; and immediately thereupon the share shall be cancelled, and all liabilities and rights with respect to the share shall thereupon be absolutely extinguished.

Company may cancel forfeited shares, with consent of holders.

Sect. 9.

As to surrender of shares.

9. The company may from time to time accept, on such terms as they think fit, surrenders of any shares which have not been fully paid up.

No money to be paid for cancellation or surrender.

10. The company shall not pay or refund to any shareholder any sum of money for or in respect of the cancellation or surrender of any share.

Power to create shares in lieu of cancelled, forfeited, etc., shares.

11. The company may from time to time, in lieu of any shares that have been cancelled or surrendered, issue new shares of such amounts as will allow the same to be conveniently apportioned or disposed of according to the resolution of any ordinary or extraordinary meeting of the company, and may from time to time fix the amounts and times of payment of the calls on any such new shares, and dispose thereof on such terms and conditions as may be so resolved upon : Provided, that the aggregate nominal amount of the new shares shall not exceed the aggregate nominal amount of the shares in lieu of which the new shares are issued, after deducting the amount actually paid up in respect of the shares cancelled or surrendered.

PART II.

ADDITIONAL CAPITAL.

New Ordinary Shares or Stock.

Regulations as to creation and issue of ordinary shares or new ordinary stock.

12. Where any company, incorporated either before or after the passing of this Act for the purpose of carrying on any undertaking, is authorised by any special Act herein-after passed, and incorporating this part of this Act, to raise any additional sum or sums by the issue of new ordinary shares, or by the issue of new ordinary stock, or (at the option of the company) by either of those modes,—then and in every such case the company, with the sanction of such proportion of the votes of the shareholders and stockholders entitled to vote in that behalf at meetings of the company, present (personally or by proxy) at a meeting of the company specially convened for the purpose, as is prescribed in the special Act, and, if no proportion is prescribed, then of three-fifths of such votes, may, for the purpose of raising the additional sum or sums, from time to time create and issue (according as the authority given by the special Act extends to shares only, or to stock only, or to both) such new ordinary shares, of such nominal amount, and subject to the payment of calls of such amounts and at such times, as the company thinks fit, or such new ordinary stock as the company thinks fit.

For an instance of a special Act to confirm and make valid the creation and issue of shares irregularly issued, see Staines and Egham District Gas and Coke Company's Act, 1893 (56 & 57 Vict. c. xxviii).

Preference Shares or Stock.

Regulations as to creation and issue of

13. Where any such company is authorised by any special Act hereafter passed and incorporating this part of this Act to raise any additional sum or sums by the issue of new preference shares, or by the issue.

of new preference stock, or (at the option of the company) by either of those modes—then and in every such case the company, with the like sanction as aforesaid, may, for the purpose of raising such additional sum or sums, from time to time, create and issue (according as the authority given by the special Act extends to shares only, or to stock only, or to both) such new shares or new stock, either ordinary or preference, and either of one class and with like privileges, or of several classes and with different privileges, and of the same or different amounts, and respectively with any fixed, fluctuating, contingent, preferential, perpetual, terminable, deferred, or other dividend or interest, not exceeding the rate prescribed in the special Act, and if no rate is prescribed then not exceeding the rate of five pounds per centum per annum, and subject (as to any such new shares) to the payment of calls of such amounts and at such times, as the company from time to time thinks fit:

new preference shares or new preference stock.

Provided always, that any preference assigned to any shares or stock so issued under the special Act shall not affect any guarantee or any preference or priority in the payment of dividend or interest on any shares or stock, that may have been granted by the company under or confirmed by any previous Act, or that may be otherwise lawfully subsisting.

Saving rights of preference shareholders.

See hereon *Chelsea Waterworks Co.* v. *Metropolitan Water Board*, [1904] 2 K. B. 77, cited *ante*, at p. 519, under s. 75 of the Waterworks Clauses Act, 1847.

In the case of companies under the Companies Act, 1862 (25 & 26 Vict. c. 89), it was held that the issue of preference shares without the passing of a special resolution (which was required by the articles of the memorandum of association) was capable of ratification by the company (*In re London and New York Investment Corporation*, [1895] 2 Ch. 861, and see cases there cited); and as to the position of holders of preference shares invalidly issued, see *Andrews* v. *Gas Meter Co.*, [1897] 1 Ch. 361.

14. The preference shares or preference stock so issued shall be entitled to the preferential dividend or interest assigned thereto, out of the profits of each year, in priority to the ordinary shares and ordinary stock of the company; but if in any year ending on the day prescribed in the special Act, and, if no day is prescribed, then on the thirty-first day of December, there are not profits available for the payment of the full amount of preferential dividend or interest for that year, no part of the deficiency shall be made good out of the profits of any subsequent year, or out of any other funds of the company.

Preference shares to be entitled to dividends only out of the profits of each year.

See note to s. 120 of the Act of 1845, *ante*, p. 1129.

15. The terms and conditions to which any preference share or preference stock is subject shall be clearly stated on the certificate of that preference share or portion of preference stock.

Terms, etc., to be stated on certificates.

General Provisions as to New Shares or Stock.

16. If, after having created new shares or new stock, the company determines not to issue the whole of the new shares or new stock, they may cancel the unissued new shares or new stock.

Unissued shares and stock may be cancelled.

Sect. 17.

If ordinary stock or shares at a premium, new shares or stock to be offered to existing ordinary shareholders.

17. If, at the time of the issue of new shares or new stock, the ordinary shares or ordinary stock of the company are or is at a premium, then, unless the company before the issue of the new shares or new stock otherwise determines, the new shares or new stock then issued shall be of such amount as will conveniently allow the same to be apportioned among the then holders of the ordinary stock and ordinary shares, respectively, in proportion, as nearly as conveniently may be, to the ordinary shares and ordinary stock held by them respectively, and shall be offered to them at par in that proportion: Provided, that it shall not be obligatory on the company so to apportion or offer any new shares or new stock unless the amount of every new share or portion of new stock to be so offered would, if so apportioned, be at least the sum prescribed in the special Act, and, if no sum is prescribed, then at least ten pounds.

See note to s. 58 of the Act of 1845, *ante,* p. 1106.

Offer to be made by letter.

18. The offer of new shares or new stock shall be made by letter under the hand of the treasurer or secretary of the company given to every such shareholder or stockholder, as aforesaid, or sent by post addressed to him according to his address in the shareholders' or stockholders' address book, or left for him at his usual or then last known place of abode in England, Scotland, or Ireland (as the case may require); and every such offer made by letter sent by post shall be considered as made on the day on which the letter in due course of delivery ought to be delivered at the place to which it is addressed.

See note to preceding section.

New shares or stock to vest on acceptance.

19. The new shares or portions of new stock so offered shall vest in and belong to the shareholders or stockholders who accept the same, or their nominees.

See s. 59 of the Act of 1845, *ante*, p. 1106.

As to disposal of new shares or stock to others.

20. If any shareholder or stockholder fails for the time prescribed in the special Act, and if no time is prescribed then for one month after the offer to him of new shares or new stock, to signify his acceptance of the same or any part thereof, then and in every such case at the expiration of that period he shall be deemed to have declined the offer of such new shares or new stock or such part thereof as aforesaid, and the same may be disposed of by the company as hereinafter provided:

Power to enlarge time for accepting new shares or stock.

Provided, that where a shareholder or stockholder, from absence abroad or other cause satisfactory to the directors of the company, omits to signify within the time aforesaid his acceptance of the new shares, or new stock offered to him, the directors, if they think proper, may permit him to accept the same, notwithstanding that such time has elapsed.

General power to dispose of unappropriated new shares and stock.

21. Subject to the foregoing provisions, the company may from time to time dispose of new shares and new stock at such times, to such persons, on such terms and conditions, and in such manner, as the directors think advantageous to the company; [*but so that not less than the full nominal amount of any share or portion of stock be payable or paid in respect thereof*].

As to the words in italics it was enacted by the Companies Clauses Act, 1869 (32 & 33 Vict. c. 48), s. 5, that:

> Section 21 of the Companies Clauses Act, 1863, shall, with respect to any company to which it is applicable under the provisions of this or any other Act be read and have effect as if the following words, that is to say, "but so that not less than the full nominal amount of any share or portion of stock be payable or paid in respect thereof," had not been inserted in that section.

Sects. 6, 7, and 8 of the same Act give powers to issue shares at a discount under the conditions there specified. See *post*, p. 1155. Now, by the Statute Law Revision Act, 1875, the words in italics have been repealed altogether.

A company registered under the Act of 1862 has no power to issue shares as fully paid up for a money consideration less than their nominal value (*Ooregum Gold Mining Co.* v. *Roper*, [1892] A. C. 125, and see *Randt Gold Mining Co.* v. *New Balkis Eersterling, Ltd.*, [1903] 1 K. B. 461). This is so even where authorised by the memorandum or articles of association (*Welton* v. *Saffery*, [1897] A. C. 299). *Cf. In re Eddystone Marine Insurance Co.*, [1893] 3 Ch. 9; *Hirsche* v. *Sims*, [1894] A. C. 654.

The directors of a joint stock company, incorporated under the Companies Act, 1862, and possessing borrowing powers, issued debentures at 7½ per cent. discount; some of the debentures having been taken by a director:—*Held*, that the issue of debentures at a discount was not illegal; and that the director was not liable to the company for the difference between 92½ per cent. and par (*In re Compagnie Générale de Bellegarde, Campbell's Case* (1876), 4 Ch. D. 470). The Court of Appeal have also decided that a company governed by the Companies Clauses Consolidation Act, 1845, and the Acts amending it, may issue fully paid up original stock at a discount, and for payment either in cash, or for land or labour or other consideration, subject to the liability of the directors for issuing the stock below its value without necessity. It was queried whether such a company can issue shares liable to calls at a discount. The Court of Appeal also decided that such companies may also issue debentures or debenture stock at a discount, if authorised to borrow money or raise money by mortgages or debentures. They held that the principal of *Campbell's Case, supra*, is applicable to such companies as well as to companies constituted under the Companies Acts, 1862 and 1867; and they held that an agreement by a railway company with bankers to issue to them paid-up stock and debentures at a discount, in consideration of a large advance of money by them, was under the circumstances valid and reasonable (*Webb* v. *Shropshire Rail. Co.*, [1893] 3 Ch. 307). The foregoing case, it will be observed, related to original stock. With regard to original shares it has been held that a company governed by the Act of 1845, and the Acts amending the same, may issue fully paid-up original shares at a sum less than their nominal amount, in the same manner as new shares can, under the authority of those Acts, be issued (*Statham* v. *Brighton Marine Palace, etc. Co.*, [1899] 1 Ch. 199).

PART III.

Debenture Stock.

Regulations as to creation and issue of debenture stock.

22. Where any company, incorporated either before or after the passing of this Act for the purpose of carrying on any undertaking, is authorised by any special Act hereafter passed, and incorporating this part of this Act, to create and issue debenture stock,—then and in every such case the company, with the sanction of such proportion of the votes of the shareholders and stockholders entitled to vote in that behalf at meetings of the company, present (personally or by proxy), at a meeting of the company specially convened for the purpose, as is prescribed in

Sect. 22. the special Act, and, if no proportion is prescribed, then of three-fifths of such votes, may from time to time raise all or any part of the money which for the time being they have raised, or are authorised to raise, on mortgage or bond, by the creation and issue, at such times, in such amounts and manner, on such terms, subject to such conditions, and with such rights and privileges, as the company thinks fit, of stock to be called debenture stock, instead of and to the same amount as the whole or any part of the money which may for the time being be owing by the company on mortgage or bond, or which they may from time to time have power to raise on mortgage or bond, and may attach to the stock so created such fixed and perpetual preferential interest [*not exceeding the rate prescribed in the special Act, and if no rate is prescribed, then not exceeding the rate of four pounds per centum per annum*] payable half-yearly or otherwise, and commencing at once, or at any future time or times, when and as the debenture stock is issued, or otherwise, as the company thinks fit.

With regard to the words in italics, the Companies Clauses Act, 1869, provides as follows (s. 1):

> Part III. of the Companies Clauses Act, 1863, shall be read and have effect as if the following words, that is to say, "not exceeding the rate prescribed in the special Act, and if no rate is prescribed, then not exceeding the rate of four pounds per centum per annum" had not been inserted in section 22 of that Act, and any special Act of a company passed before the passing of this Act, prescribing any rate, shall be read and have effect as if no rate had been prescribed therein.

The words in italics have now been repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

The 24th section of the Railway Companies Act, 1867 (30 & 31 Vict. c. 127), which empowers railway companies to issue debenture stock subject to the provisions of Part III. of the Companies Clauses Act, 1863, applies to all railway companies which have power to raise money by mortgage or bond, although their special Act does not incorporate Part III. of the Act of 1863 (*In re Mersey Rail. Co.*, [1895] 2 Ch. 287). As to companies other than railway companies, see s. 3 of the Companies Clauses Consolidation Act, 1869, p. 1155.

The rule that specific performance cannot be granted in respect of a contract to lend money, applies to a contract to lend to a company money, payable by instalments upon the security of debentures to be issued by the company (*South African Territories, Ltd.* v. *Wallington*, [1898] A. C. 309).

A railway company—incorporated by a special Act, authorising it to issue debenture stock, bearing interest, subject to Part III. (which includes ss. 22 and 27) of the Companies Clauses Act, 1863—in 1885 issued debenture stock, from which it gave certificates under its common seal, and also a warrant for interest under the signature of its secretary. The warrant was never presented for payment, and in 1896 the company went into voluntary liquidation under another Act:—*Held*, that, the liability being statutory, the period of limitation was twenty years, and the claim for interest mentioned in the warrant was therefore not statute-barred (*In re Cornwall Minerals Rail. Co.*, [1897] 2 Ch. 74).

As to the powers of trustees to invest in debenture or other stocks of companies, see the Trustees Act, 1893 (56 & 57 Vict. c. 53), referred to in the notes to s. 8 of the Act of 1845, *ante*, p. 1082.

Sect. 22.

NOTE.

Debentures of a company are not "stock or shares" of or in a company within the meaning of Ord. XLVI., r. 1, or the Judgments Act, 1838 (1 & 2 Vict. c. 110), s. 14, and therefore they cannot be made the subject of a charging order under the provisions of that rule and section (*Sellar* v. *Chas. Bright & Co.*, [1904] 2 K. B. 446).

For a case which turned upon the priorities of various issues of debenture stock, issued under various special Acts, see *Harrison* v. *Cornwall Minerals Rail. Co.* (1883), 8 App. Cas. 780. For the facts, see the report in the Court of Appeal, 18 Ch. D. 334.

As to the rights of parties in the case of debentures issued as a floating security, see notes to s. 38 of the Act of 1845, *ante*, p. 1099, and as to the construction of a contract to insure payment of debentures at maturity, see *Finlay* v. *Mexican Investment Corporation*, [1897] 1 Q. B. 517.

Sect. 23 of the Railway Companies Act, 1867, does not give to creditors of a railway company in respect of mortgages, bonds, or debenture stock, any lien or charge which they did not possess before the Act, so as to entitle them to payment in priority out of the proceeds of surplus lands of the company, which have been sold on the application of the judgment creditors of the company (*In re Hull, Barnsley, and West Riding Junction Rail. Co.* (1888), 40 Ch. D. 119); *cf. Liskeard and Caradon Rail. Co.*, [1903] 2 Ch. 681.

See also the notes to s. 38 of the Act of 1845, *ante*, p. 1099.

By s. 8 of the Finance Act, 1899, it is provided:

> "(1) Where any local authority, corporation, company, or body of persons formed or established in the United Kingdom propose to issue any loan capital, they shall, before the issue thereof, deliver to the Commissioners a statement of the amount proposed to be secured by the issue.
>
> "(2) Subject to the provisions of this section every such statement shall be charged with an *ad valorem* stamp duty of two shillings and sixpence for every hundred pounds and any fraction of a hundred pounds over any multiple of a hundred pounds of the amount proposed to be secured by the issue, and the amount of the duty shall be a debt due to Her Majesty.
>
> "(3) The duty under this section shall not be charged to the extent to which it is shown to the satisfaction of the Commissioners that the stamp duty payable in respect of a mortgage or marketable security has been paid on any trust deed or other document securing the loan capital proposed to be issued.
>
> "(4) If any local authority, corporation, company, or body of persons neglect to deliver a statement, or fail to pay the duty in compliance with this section, that local authority, corporation, company, or body of persons shall be liable to pay to Her Majesty, in addition to the duty, a sum equal to ten per cent. upon the amount of the duty, and a like sum for every month after the first month during which the neglect or failure continues.
>
> "(5) In this section the expression "loan capital" means any debenture stock, county stock, municipal stock, or funded debt, by whatever name known, or any capital raised by any local authority, corporation, company, or body of persons, formed or established in the United Kingdom, which is borrowed, or has the character of borrowed money, whether it is in the form of stock or in any other form, but does not include any county council or municipal corporation bills repayable not later than twelve months from their date, or any overdraft at the bank, or other loan raised for a merely temporary purpose for a period not exceeding twelve months, and the expression "local authority" includes any county council, municipal corporation, district council, dock trustees, harbour trustees, or other local body by whatever name called."

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NOTE.

By the special Act of the defendant company, three different debenture stocks of the company, being respectively 3 per cent., 4 per cent., and 4¼ per cent. stock, and amounting to £411,852 were extinguished, and in lieu thereof there was created a new 3 per cent. debenture stock. The holders of the original 3 per cent. stock received the same nominal amount of the new stock, and the holders of the 4 per cent. and 4¼ per cent. stocks received new stock to such nominal amount as, at the rate of 3 per cent., would yield to the holder the same amount as was payable in respect of the stock previously held. The amount of the new debenture stock requisite to carry out the Act was £529,136, and stock to this amount was inscribed in the names of the persons entitled thereto, and certificates were issued in exchange for the old certificates. It was held, that there was issue of a loan capital within the meaning of s. 8 of the Finance Act, 1899, and that the stamp duty imposed by that section was payable (*Attorney-General* v. *Regent's Canal and Dock Co.*, [1904] 1 K. B. 263). See also the cases cited with this case in the INTRODUCTION, at pp. 24, 25.

By s. 10 of the Finance Act, 1907, it is provided:

> "(1) Where it is shown to the satisfaction of the Commissioners that the loan capital issued by any local authority, corporation, company, or body of persons, in respect of which a statement has, after the commencement of this Act, been delivered to the Commissioners under s. 8 of the Finance Act, 1899, has been wholly or partly applied for the purpose of the conversion or consolidation of then existing loan capital, that authority, corporation, company, or body of persons, as the case may be, shall be entitled to repayment in respect of the duty charged on the statement so delivered at the rate of two shillings for every hundred pounds of the capital to which the statement relates which is so shown to have been applied for the purpose of the conversion or consolidation of then existing loan capital; but this section shall not apply to any duty payable in respect of a mortgage or marketable security which has been paid on any trust deed or other document securing the loan capital which has been issued.
>
> "(2) If it is represented to the Commissioners by any such local authority, corporation, company, or body of persons that loan capital about to be issued by them is to be applied, in whole or in part, for the purpose of the conversion or consolidation of existing loan capital, the Commissioners may postpone the time for the delivery of the statement and the payment of duty under s. 8 of the Finance Act, 1899, until the capital has been issued or until such other time as the Commissioners think fit for the purpose of enabling the payment and repayment of the duty to take place as one transaction."

Debenture stock to be a prior charge.

23. Debenture stock, with the interest thereon, shall be a charge upon the undertaking of the company, prior to all shares or stock of the company, and shall be transmissible and transferable in the same manner and according to the same regulations and provisions as other stock of the company, and shall in all other respects have the incidents of personal estate.

See the notes to s. 38 of the Act of 1845, *ante*, p. 1099, and *Attree* v. *Hawe* (1878), 9 Ch. D., at p. 347.

Interest on debenture stock to be a primary charge.

24. The interest on debenture stock shall have priority of payment over all dividends or interest on any shares or stock of the company, whether ordinary or preference or guaranteed, and shall rank next to the interest payable on the mortgages or bonds for the time being of the company legally granted before the creation of such stock; but the holders of debenture stock shall not, as among themselves, be entitled to any preference or priority.

Sect. 24.

NOTE.

This section applies only to debentures issued under the same special Act, and not to all debentures issued by the same company (*In re Mersey Rail. Co.*, [1895] 2 Ch. 287).

See *Re Burry Port and Gwendreath Valley Rail. Co.*, cited *infra*, under s. 30.

Payment of arrears may be enforced by appointment of receiver or judicial factor.

25. If within thirty days after the interest on any such debenture stock is payable the same is not paid, any one or more of the holders of the debenture stock holding, individually or collectively, the sum in nominal amount thereof prescribed in the special Act, and if no sum is prescribed, then a sum equal to one-tenth of the aggregate amount which the company is for the time being authorised to raise by mortgage, by bond, and by debenture stock, or the sum of ten thousand pounds, whichever of the two last-mentioned sums is the smaller sum, may (without prejudice to the right to sue in any court of competent jurisdiction for the interest in arrear) require the appointment in England or Ireland of a receiver, and in Scotland of a judicial factor.

Mode of appointing receiver or judicial factor.

26. Every such application for a receiver shall be made to two justices, and every such application for a judicial factor shall be made to the court of session; and on any such application the justices or court (as the case may be), by order in writing, after hearing the parties, may appoint some person to receive the whole or a competent part of the tolls or sums liable to the payment of the interest, until all the arrears of interest then due on the debenture stock, with all costs, including the charges of receiving the tolls or sums, are fully paid; and upon such appointment being made all such tolls or sums shall be paid to and received by the person so appointed; and all money so received shall be deemed so much money received by or to the use of the several persons interested in the same, according to their several priorities.

The receiver or judicial factor shall distribute rateably and without priority, among all the proprietors of debenture stock to whom interest is in arrear, the money which so comes to his hands, after applying a sufficient part thereof in or towards satisfaction of the interest on the mortgages and bonds of the company.

As soon as the full amount of interest and costs has been so received, the power of the receiver or judicial factor shall cease, and he shall be bound to account to the company for his acts or intromissions or the sums received by him, and to pay over to the company any balance that may be in his hands.

Arrears may be recovered by action or suit.

27. If the interest on debenture stock is in arrear for thirty days next after any of the respective days whereon the same is payable, the holder for the time being thereof may (without prejudice to his power to apply for the appointment of a receiver or judicial factor) recover the arrears with costs by action or suit against the company in any court of competent jurisdiction.

Debenture stock to be registered.

28. The company shall cause entries of the debenture stock from time to time created to be made in a register to be kept for that purpose,

Sect. 28. wherein they shall enter the names and addresses of the several persons and corporations from time to time entitled to the debenture stock, with the respective amounts of the stock to which they are respectively entitled ; and the register shall be accessible for inspection and perusal at all reasonable times to every mortgagee, bondholder, debenture stockholder, shareholder, and stockholder of the company, without the payment of any fee or charge.

The right to inspect includes a right to take copies. See the notes to s. 45 of the Act of 1845, *ante*, p. 1103.

Cf. the provisions of s. 9 of the Companies Clauses Consolidation Act, 1845, and the note thereunder at p. 1083, *ante*.

Company to deliver certificates to holders of debenture stock.

29. The company shall deliver to every holder of debenture stock a certificate stating the amount of debenture stock held by him ; and all regulations or provisions for the time being applicable to certificates of shares in the capital of the company shall apply, mutatis mutandis, to certificates of debenture stock.

Mortgages not affected by this Act.

30. Nothing herein or in the special Act authorising the issue of debenture stock contained shall in any way affect any mortgage or bond at any time legally granted by the company before the creation of such stock, or any power of the company to raise money on mortgage or bond ; but the holders of all such mortgages and bonds shall, during the continuance thereof respectively, be entitled to the same priorities, rights, and privileges in all respects as they would have been entitled to if the special Act authorising the issue of debenture stock had not been passed.

A railway company, having unexhausted powers of borrowing, obtained a special Act, giving them further powers to borrow on mortgage, and, "in lieu thereof," to create and issue debenture stock, and provided for the priority of existing mortgages or bonds. The company exercised such borrowing powers by the creation of debenture stock. Subsequently to such creation the company alternately issued debenture stock and bonds. The income was insufficient to pay the interest on the debenture stock and bonds :—*Held*, that the special Act in effect substituted the time of the passing of that Act for the creation of the debenture stock (the time specified in s. 24 of the Companies Clauses Act, 1863) as the period for determining in what order the stock was to rank, and also that the interest on all mortgages or bonds, subsisting at the time of the passing of the special Act, had priority over the interest on debenture stock granted by virtue of that Act, and that the interest on bonds granted after the passing of that Act ranked *pari passu* with the interest on the debenture stock (*Re Burry Port and Gwendreath Valley Rail. Co.* (1885), 54 L. J. Ch. 710). As to mortgaging unpaid-up capital, see *In re Pyle Works* (1890), 44 Ch. D. 534, and *Sadler* v. *Worley*, [1894] 2 Ch. 170.

Holders of debenture stock not to vote.

31. Debenture stock shall not entitle the holders thereof to be present or vote at any meeting of the company, or confer any qualification, but shall, in all respects not otherwise by or under this Act or the special Act provided for, be considered as entitling the holders to the rights and powers of mortgagees of the undertaking other than the right to require repayment of the principal money paid up in respect of the debenture stock.

Application of money raised.

32. Money raised by debenture stock shall be applied exclusively either in paying off money due by the company on mortgage or bond, or else for the purposes to which the same money would be applicable if it were raised on mortgage or bond instead of on debenture stock.

33. Separate and distinct accounts shall be kept by the company, showing how much money has been received for or on account of debenture stock, and how much money borrowed or owing on mortgage or bond, or which they have power so to borrow, has been paid off by debenture stock, or raised thereby, instead of being borrowed on mortgage or bond.

Separate accounts of debenture stock.

34. The powers of borrowing and reborrowing by the company shall, to the extent of the money raised by the issue of debenture stock, be extinguished.

Borrowing powers extinguished to extent of debenture stock.

35. The provisions of this part of this Act shall be deemed to apply to mortgage preference stock, and to funded debt, as the case may require, in all respects as if mortgage preference stock or funded debt were mentioned throughout this part of this Act wherever debenture stock is mentioned therein.

Application of Part III. to mortgage preference stock, and funded debt.

In the absence of special circumstances, and where not prohibited by their articles from so doing, companies under the Act of 1862, and directors of such companies exercising the usual powers, may give security by deposit of title deeds for payment of a past debt (*In re Patent File Co., Ex parte Birmingham Banking Co.* (1870), L. R. 6 Ch. 83). See further, *In re Pyle Works* (1890), 44 Ch. D. 534, and *Murray* v. *Scott* (1884), 9 App. Cas. 519.

PART IV.

CHANGE OF NAME.

36. Where by any special Act hereafter passed and incorporating this part of this Act the name of any company incorporated either before or after the passing of this Act for the purpose of carrying on any undertaking is changed,—then and in every such case from the passing of the special Act the company by their new name shall have and may exercise the powers then vested in the company by their original name; and all Acts relating to the company by their original name shall be read and interpreted as if throughout those Acts, whenever the original name of the company or any reference to the company by their original name occurs, the new name of the company or a reference to the company by their new name were substituted.

Continuance of powers.

37. No action, suit, bill, process, writ, indictment, information, or other proceeding, whether civil or criminal, which at or immediately before the passing of the special Act is commenced and is then pending,—either at the suit or instance of the company, by their original name, against any other corporation or any person, or at the suit or instance of any other corporation or any person against the company, by their original name,—shall abate, determine, or be otherwise impeached or affected for or by reason of the change of the name of the company; nor shall any notice, tender, requisition, warrant, summons, pleading, civil or criminal writ or other process, record, deed, contract, agreement, writing, or instrument then or thereafter to be

Actions, etc., not to abate.

Sect. 37. made, issued, written, or commenced, be deemed to be vacated, discharged, invalidated, prejudiced, or affected by reason of the company or their undertaking being therein respectively called by the original name of the company or undertaking; and it shall not be necessary in any bill, suit, indictment, information, proceeding, notice, tender, requisition, warrant, summons, pleading, civil or criminal writ, or other process, or in any record, deed, contract, agreement, writing, or other instrument or matter, to aver that the company had been called or known for any period by the original name of the company, or that their undertaking had been called or known within that period by the original name of the undertaking, or that by the special Act affecting the change the names of the company and their undertaking were changed, and that after the passing of that special Act the company had been called or known by their new name, and their undertaking by its new name; but it shall be deemed true, lawful, and sufficient therein to aver the style and describe the company by their new name, and their undertaking by its new name, in the same manner as if the company had been originally incorporated, called, or known by their new name, and as if their undertaking had been originally called or known by its new name.

General saving of rights.

38. Notwithstanding the change of the name of the company, everything before the passing of the special Act effecting the change done, suffered, or confirmed under or by virtue of any other Act shall be as valid as if the special Act effecting the change were not passed; and the change of name and last-mentioned special Act respectively shall accordingly be subject and without prejudice to everything so done, suffered, or confirmed before the passing of the last-mentioned special Act, and to all rights, liabilities, claims, and demands, then present or future, which, if the change of name had not happened and such last-mentioned special Act had not been passed, would be incident to or consequent on anything so done, suffered, or confirmed.

Contracts, etc., preserved.

39. Notwithstanding the change of the name of the company, all deeds, instruments, purchases, sales, securities, and contracts before the passing of the special Act effecting the change made under any other Act, or with reference to the purposes thereof, shall be as effectual to all intents in favour of, against, and with respect to the company as if the name of the company had remained unchanged.

COMPANIES CLAUSES ACT, 1869.

(32 & 33 Vict. c. 48.)

An Act to amend the Companies Clauses Act, 1863.

[2nd August, 1869.]

Preamble repealed by the Statute Law Revision (No. 2), Act, 1893 (56 & 57 Vict. c. 54).

1. Part III. of the Companies Clauses Act, 1863, shall be read and have effect as if the following words, that is to say, "not exceeding the rate prescribed in the special Act, and if no rate is prescribed, then not exceeding the rate of four pounds per centum per annum," had not been inserted in section 22 of that Act, and any special Act of a company passed before the passing of this Act, prescribing any rate, shall be read and have effect as if no rate had been prescribed therein.

Amendment of Part III. of 26 & 27 Vict. c. 118, as to rate of interest on debenture stock.

See *ante*, p. 1147.

2. Provided, that any debenture stock, the creation whereof has been authorised by a company, but which has not been issued before the passing of this Act, shall not be issued on any terms other than those whereon it might have been issued if this Act had not been passed, unless and until the issue thereof, on terms other than as aforesaid, is after the passing of this Act authorised by the company in manner provided in section 22 of the Companies Clauses Act, 1863.

Restriction on rate of interest on debenture stock already authorised.

3. Any company having power to raise money on mortgage or bond by virtue of any Act of Parliament, but not having power to create and issue debenture stock, may create and issue debenture stock subject to the provisions of Part III. of the Companies Clauses Act, 1863 (relating to debenture stock), and Part III. of the said Act, as amended by this Act, shall be deemed to be incorporated with the special Act of every such company.

Power to issue debenture stock, subject to Part III. of 26 & 27 Vict. c. 118.

4. Money borrowed by a company for the purpose of paying off and duly applied in paying off bonds or mortgages of the company given or made under the statutory powers of the company shall, so far as the same is so applied, be deemed money borrowed within and not in excess of such statutory powers.

Advances to meet debentures falling due.

5. Section 21 of the Companies Clauses Act, 1863, shall, with respect to any company to which it is applicable under the provisions of this or any other Act, be read and have effect as if the following words, that is to say, "but so that not less than the full nominal amount of any share or portion of stock be payable or paid in respect thereof," had not been inserted in that section.

Power to issue shares or stock at discount.

See notes to s. 21 of the Act of 1863, *ante*, p. 1147.

6. Any shares forming part of the capital (whether original or additional) authorised to be raised by any special Act of a company

Power to issue residue

Sect. 6.

of original or other capital at discount.

passed before the present session which have not been disposed of may be disposed of in manner provided by Part II. of the Companies Clauses Act, 1863, as amended by this Act, and that part, as so amended, shall be deemed incorporated with such special Act accordingly.

Restriction on issuing at discount shares or stock already authorised.

7. Provided, that any shares, the creation whereof has been authorised by a company, but which have not been issued before the passing of this Act, shall not be issued on any terms other than those whereon the same might have been issued if this Act had not been passed unless and until the issue thereof on terms other than as aforesaid is after the passing of this Act authorised by the company in manner provided by Part II. of the Companies Clauses Act, 1863.

Act not to affect provisions as to capital upon which the dividend is limited.

8. Provided always, that this Act shall not be construed to alter or extend the provisions of any Act relating to share capital in respect of which the amount of profits to be divided is limited to a fixed rate per centum upon the paid-up capital of the company.

Short title.

9. This Act may be cited as "The Companies Clauses Act, 1869."

COMPANIES CLAUSES CONSOLIDATION ACT, 1888.

(51 & 52 VICT. C. 48.)

An Act to amend the Companies Clauses Consolidation Act, 1845, *in respect to voting by Proxy.* [24th December, 1888.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title.

1. This Act may be cited as the Companies Clauses Consolidation Act, 1888, and the Companies Clauses Consolidation Act, 1845, and this Act may be cited together as the Companies Clauses Consolidation Acts, 1845 and 1888 ; and this Act shall be construed together with the said Act as part thereof.

Amendment of 8 & 9 Vict. c. 16, s. 76, as to proxies.

2. To section seventy-six of the Companies Clauses Consolidation Act, 1845, the following words shall be added : "Provided, that where the shareholder is [*a member of*] a body corporate, the proxy may be any member of such body, though not personally a shareholder in the company."

The words in italics were repealed by the Companies Clauses Consolidation Act, 1889. The last-mentioned Act was repealed by the Statute Law Revision Act, 1908, its object—*i.e.*, the repeal of the above words—having been effected.

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Proxy to be taken to be shareholder.

3. Such a proxy shall, during the continuance of his appointment, be taken in virtue thereof to be a shareholder in the company to which his appointment relates, holding the number of shares held by the corporation by whom he is appointed, for all purposes except the transfer of any such share or the giving receipts for any dividend thereon.

Forms of proxy papers.

4. The appointment may be made and revoked in the following form:

FORMS OF PROXY PAPERS.

1. *General Appointment.*

We, the , being a body corporate, and one of the proprietors of the company, hereby appoint A. B., of , who is hereby certified to be a member of this corporation, to be our proxy, to vote in our name as he shall think proper upon any matter relating to the several undertakings proposed at any meeting of the said company to be held during the continuance of this appointment, and otherwise to be our representative in such company.

In witness whereof the common seal of the said corporation, attested as is required by its regulations, is hereto set this day of .

2. *Revocation of General Proxy.*

We, the , hereby revoke the appointment of , of , who is our proxy in the company, made by an instrument under our common seal, and dated the day of .

In witness whereof the common seal of the said corporation, attested as is required by its regulations, is set hereto the day of .

[An instrument in this form shall not require any stamp.]

3. *Special Appointment.*

We, the , being a body corporate, and one of the proprietors of the company, do hereby appoint A. B., of , who is hereby certified to be a member of this corporation, to vote in our name as he shall think proper upon any matter relating to the said undertaking proposed at the meeting of the proprietors of the said company to be held on the day of next, or at any adjournment thereof.

In witness whereof the common seal of the said corporation, attested as is required by its regulations, is set hereto this day of .

COMPANIES CLAUSES CONSOLIDATION ACT, 1889.

(52 & 53 VICT. c. 37.)

An Act to amend the Companies Clauses Consolidation Act, 1888.

[12th August, 1889.]

This Act was repealed by the Statute Law Revision Act, 1908, the object of the Act, *i.e.*, the repeal of the words "a member of" in s. 2 of the Companies Clauses (Consolidation) Act, 1888, having been effected.

LANDS CLAUSES CONSOLIDATION ACT, 1845.

(8 & 9 VICT. c. 18.)

An Act for consolidating in One Act certain Provisions usually inserted in Acts authorising the taking of Lands for Underakings of a public Nature. [8th May, 1845.]

Preamble repealed by Statute Law Revision Act, 1891 (54 & 55 Vict. c. 67).

Act to apply to all undertakings authorised by Acts hereafter to be passed.

[**1.**] This Act shall apply to every undertaking authorised by any Act which shall hereafter be passed, and which shall authorise the purchase or taking of lands for such undertaking, and this Act shall be incorporated with such Act; and all the clauses and provisions of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other Act which shall be incorporated with such Act, form part of such Act, and be construed together therewith as forming one Act.

This Act does not extend to Scotland; see s. 152. The Lands Clauses Consolidation (Scotland) Act, 1845, is substantially the same as this Act. The Act applies to Ireland save as regards railways and the purchasing and taking of lands in connection therewith. See the Railways Act (Ireland), 1851 (14 & 15 Vict. c. 70), amended by 23 & 24 Vict. c. 97; 27 & 28 Vict. c. 71; and 31 & 32 Vict. c. 70.

This Act applies to undertakings authorised prior to the date of this Act where the authorising statute has been revised by a fresh Act passed subsequently to this Act (*Lancashire and Yorkshire Rail. Co.* v. *Evans* (1851), 15 Beav. 322, 327; and see *Ex parte Eton College* (1850), 20 L. J. Ch. 1).

This Act was intended to apply only to the acquisition of land for undertakings of a public nature, and therefore is inapplicable to the case of private estate bills or the like (*Wale* v. *Westminster Palace Hotel Co.* (1860), 8 C. B. (N.S.) 276; *Re Sion College, London Corporation* (1887), 57 L. T. 743).

In construing private Acts of Parliament which incorporate this Act, and adjusting the general provisions of the public Act to the particular provisions of the special Act, considerations of reason and justice, and the universal analogy of such provisions in similar Acts of Parliament, ought to have much weight and force (*per* Lord SELBORNE, L.C., in *Metropolitan District Rail. Co.* v. *Sharpe* (1880), 5 App. Cas. 425).

By the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 23, it is enacted as follows:

The expression "Lands Clauses Acts" shall mean:

(*a*) As respects England and Wales, the Lands Clauses Consolidation Act, 1845, the Lands Clauses Consolidation Acts Amendment Act, 1860, the Lands Clauses Consolidation Act, 1869, and the Lands Clauses (Umpire) Act, 1883, and any Acts for the time being in force amending the same.

INTERPRETATIONS IN THIS ACT.

And with respect to the construction of this Act and of Acts to be incorporated therewith, be it enacted as follows:

"Special Act."

2. The expression "the special Act," used in this Act, shall be construed to mean any Act which shall be hereafter passed which shall authorise the taking of lands for the undertaking to which the same relates, and with which this Act shall be so incorporated as aforesaid; and the word "prescribed," used in this Act, in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word shall occur shall be construed as if, instead of the word "prescribed," the expression "prescribed for that purpose in the special Act" had been used; and the expression "the works" or "the undertaking" shall mean the works or undertaking, of whatever nature, which shall by the special Act be authorised to be executed; and the expression "the promoters of the undertaking" shall mean the parties, whether company, undertakers, commissioners, trustees, corporations, or private persons, by the special Act empowered to execute such works or undertaking.

"The works."

"Promoters of the undertaking."

The term "special Act" has been held to include a provisional order made under a special Act (*Hill* v. *Haire* (1899), 1 I. R. 87).

As to the meaning of the expression "the undertaking," see *Doe* d. *Myatt* v. *St. Helen's Rail. Co.* (1841), 2 Q. B. 364; *Gardner* v. *L. C. & D. Rail. Co.* (1866), L. R. 2 Ch. 201; *Blaker* v. *Herts and Essex Waterworks Co.*, cited *ante*, p. 1101; *Re Bagnalstown and Wexford Rail. Co., Ex parte Smith* (1867), 16 L. T. (N.S.) 615; and *King* v. *Marshall* (1864), 10 L. T. (N.S.) 557.

Interpretations in this and the special Act.

3. The following words and expressions, both in this and the special Act, shall have the several meanings hereby assigned to them, unless there be something either in the subject or context repugnant to such construction; (that is to say,)

Number.

Words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular number:

Gender.

Words importing the masculine gender only shall include females:

"Lands."

The word "lands" shall extend to messuages, lands, tenements, and hereditaments of any tenure:

This definition does not include easements. "I think no one can doubt that the decisions are right which lay down that it was never intended to compel a landowner to carve a new easement out of his land and sell it to the company against his will. The result, therefore, is that the word 'lands' in the Lands Clauses Act does not include any incorporeal easements except such as are attached to the lands which are the subject of purchase": *per* JESSEL, M.R., in *G. W. Rail. Co.* v. *Swindon Rail. Co.* (1884), 22 Ch. D., at p. 697. See 2 App. Cas. 787. See further cases noted, *ante*, p. 386, and *post*, p. 1198; and see *per* FRY, J., in *In re Metropolitan District Rail. Co. and Cosh* (1880), 13 Ch. D., at p. 610; and *London School Board* v. *Foster* (1903), 87 L. T. 700.

"Lease."

The word "lease" shall include an agreement for a lease:

"Month."

The word "month" shall mean calendar month;

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"Superior courts."

The expression "superior courts" shall mean her Majesty's superior courts of record at Westminster or Dublin, as the case may require:

"Oath."

The word "oath" shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath:

"County."

The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town:

"The sheriff."

"The clerk of the peace."

The word "sheriff" shall include under sheriff, or other legally competent deputy; and where any matter in relation to any lands is required to be done by any sheriff, or by any clerk of the peace, the expression "the sheriff" or the expression "the clerk of the peace," shall in such case be construed to mean the sheriff or the clerk of the peace of the county, city, borough, liberty, cinque port, or place where such lands shall be situate; and if the lands in question, being the property of one and the same party, be situate not wholly in one county, city, borough, liberty, cinque port, or place, the same expression shall be construed to mean the sheriff or clerk of the peace of any county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate:

"Justices."

"Two justices."

The word "justices" shall mean justices of the peace acting for the county, city, liberty, cinque port, or place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter; and where such matter shall arise in respect of lands, being the property of one and the same party, situate not wholly in any one county, city, borough, liberty, cinque port, or place, the same shall mean a justice acting for the county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate, and who shall not be interested in such matter; and where any matter shall be authorised or required to be done by two justices, the expression "two justices" shall be understood to mean two justices assembled and acting together:

See note, *ante*, p. 160.

"Owner."

Where under the provisions of this or the special Act, or any Act incorporated therewith, any notice shall be required to be given to the owner of any lands, or where any act shall be authorised or required to be done with the consent of any such owner, the word "owner" shall be understood to mean any person or corporation who, under the provisions of this or the special Act, would be enabled to sell and convey lands to the promoters of the undertaking:

As to the meaning of the word "owner," see *R.* v. *Kerrison* (1813), 1 M. & S. 435; *Lister* v. *Lobley* (1837), 7 A. & E. 124; *Bullard* v. *Harrison*

(1815), 4 M. & S. 386; *Chauntler* v. *Robinson* (1849), 4 Ex. 163; and *Russell* v. *Shenton* (1842), 3 Q. B. 449.

The expression "the bank" shall mean the Bank of England where the same shall relate to moneys to be paid or deposited in respect of lands situate in England, and shall mean the Bank of Ireland where the same shall relate to moneys to be paid or deposited in respect of lands situate in Ireland. "The bank."

4. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression "The Lands Clauses Consolidation Act, 1845." Short title of the Act.

Certain words omitted repealed by the Statute Law Revision Act, 1891 (54 & 55 Vict. c. 67).

5. And whereas it may be convenient in some cases to incorporate with Acts of Parliament hereafter to be passed some portion only of the provisions of this Act: be it therefore enacted, that, for the purpose of making any such incorporation, it shall be sufficient in any such Act to enact that the clauses of this Act with respect to the matter so proposed to be incorporated (describing such matter as it is described in this Act in the words introductory to the enactment with respect to such matter) shall be incorporated with such Act, and thereupon all the clauses and provisions of this Act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such Act shall relate. Form in which portions of this Act may be incorporated with other Acts.

Where a special Act incorporates the Lands Clauses Act, but the general scope of the special Act shows the other to be clearly inapplicable to it, the public Act is to be considered as expressly varied by the special Act. It need not be varied in terms; but, if substantially inconsistent, it will be so regarded, and the provisions of the special Act will prevail (*Weld* v. *L. & S. W. Rail. Co.* (1863), 32 Beav. 340). See also *R.* v. *G. W. Rail. Co.* (1853), 1 E. & B. 253; *R.* v. *London Corporation* (1867), L. R. 2 Q. B. 292; and the cases of *Ferrar* v. *Commissioners of Sewers of London*, and *Dungey* v. *London Corporation*, cited in notes to s. 68, *infra*.

PURCHASE OF LANDS BY AGREEMENT.

And with respect to the purchase of lands by agreement, be it enacted as follows:

6. Subject to the provisions of this and the special Act it shall be lawful for the promoters of the undertaking to agree with the owners of any lands by the special Act authorised to be taken, and which shall be required for the purposes of such Act, and with all parties having any estate or interest in such lands or by this or the special Act enabled to sell and convey the same, for the absolute purchase, for a consideration in money, of any such lands, or such parts thereof as they shall think proper, and of all estates and interests in such lands of what kind soever. Power to purchase lands by agreement.

The promoters have no right to enter into any project not pointed out by their special Act, although it may tend to increase the profits of the under-

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taking, and may be assented to by the majority of the shareholders. *Colman* v. *Eastern Counties Rail. Co.* (1846), 10 Beav. 1, in which case a railway company having no parliamentary powers to run steamboats were restrained by injunction. And see *Tomkinson* v. *S. E. Rail. Co.* (1887), 35 Ch. D. 675, where the shareholders, having authorised the directors to subscribe £1,000 to the Imperial Institute, the transaction was restrained by injunction at the instance of a holder of deferred stock, whose interest was insignificant. A railway company, having already acquired surface lands, may subsequently purchase compulsorily the minerals under those lands (*Errington* v. *Metropolitan District Rail. Co.* (1882), 19 Ch. D. 559), and may also purchase the underlying minerals by agreement after due completion of the railway authorised by the special Act (*Thompson* v. *Hickman*, [1907] 1 Ch. 550). Specific performance will not be decreed of an agreement whereby a railway company agree for the purchase of certain lands, " or for such portions or portion thereof as the company may require," in the absence of any statement by the company that they require certain of the lands (*Wentworth* v. *Hull and North Western Junction Rail. Co.* (1891), 64 L. T. 190). Where a company agreed to purchase land for £4,000, paying £2,000 at once, and it was stipulated that this fund should be forfeited if the balance was not paid by a particular day, this was held to be in the nature of penalty against which the company were entitled to be relieved on payment of the balance with interest. *Semble*, if on the true construction of the agreement this stipulation was not a penalty it would have been void as *ultra vires* (*In re Dagenham* (*Thames*) *Dock Co., Ex parte Hulse* (1873), L. R. 8 Ch. 1022).

Parties under disability enabled to sell and convey.

7. It shall be lawful for all parties, being seised, possessed of, or entitled to any such lands, or any estate or interest therein, to sell and convey or release the same to the promoters of the undertaking, and to enter into all necessary agreements for that purpose, and particularly it shall be lawful for all or any of the following parties so seised, possessed, or entitled as aforesaid so to sell, convey, or release; (that is to say) all corporations, tenants in tail or for life, married women seised in their own right or entitled to dower, guardians, committees of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest; and the power so to sell and convey or release as aforesaid may lawfully be exercised by all such parties, other than married women entitled to dower, or lessees for life, or for lives and years, or for any less interest, not only on behalf of themselves and their respective heirs, executors, administrators, and successors, and also for and on behalf of every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties, and as to such married women, whether they be of full age or not, as if they were sole and of full age, and as to such guardians, on behalf of their wards, and as to such committees, on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards, lunatics and idiots respectively could have exercised the same power under the authority of this or the special Act if they had respectively been under no disability, and as to such trustees, executors, and administrators, on behalf of their cestui que trusts, whether infants, issue unborn, lunatics, femes

covert, or other persons, and that to the same extent as such cestui que trusts respectively could have exercised the same powers under the authority of this and the special Act if they had respectively been under no disability.

Persons under disability who are enabled by this section to sell and convey are able and willing to convey within the meaning of s. 92 (*Governors of St. Thomas's Hospital* v. *Charing Cross Rail. Co.* (1861), 30 L. J. Ch. 395). As to conveyance of land taken compulsorily belonging to a city ward, see *Finnis* to *Forbes* (1883), 24 Ch. D. 587.

This section does not authorise a person of unsound mind to sell land, but only authorises the committee of such person to sell it (*In re Tugwell* (1884), 27 Ch. D. 309).

See, as to the power of the committee of a person of unsound mind not so found by Inquisition, *In re S. S. B.*, [1906] 1 Ch. 712.

As to conveyances by married women, see *Cooper* v. *Gostling* (1863), 4 Giff. 449; and as to equitable tenants for life, see *Lippincott* v. *Smyth* (1860), 29 L. J. Ch. 520; and as to inalienable estates tail, see *In re Cuckfield Burial Board* (1854), 19 Beav. 153.

Trustees for married women, absolutely entitled for their separate use, are not persons competent to contract for the sale of land under this section (*Peters* v. *Lewes, etc. Rail. Co.* (1881), 18 Ch. D. 429; and see *In re Lord Sudeley and Baines & Co.*, [1894] 1 Ch. 334).

A clause in a private Act authorised the granting of easements to a corporation by persons empowered under s. 7 of the Lands Clauses Act, 1845, to sell, and convey or release lands. It was held that this did not authorise an executor having merely a power to sell land under s. 16 of Lord St. Leonards' Act (22 & 23 Vict. c. 18), but having no estate or interest in it, to grant to the corporation an easement (*In re Barrow-in-Furness Corporation and Rawlinson's Contract*, [1903] 1 Ch. 339).

Parties under disability to exercise other powers.

8. The power hereinafter given to enfranchise copyhold lands, as well as every other power required to be exercised by the lord of any manor pursuant to the provisions of this or the special Act, or any Act incorporated therewith, and the power to release lands from any rent, charge, or incumbrance, and to agree for the apportionment of any such rent, charge, or incumbrance, shall extend to and may lawfully be exercised by every party hereinbefore enabled to sell and convey or release lands to the promoters of the undertaking.

Amount of compensation in case of parties under disability to be ascertained by valuation, and paid into the bank.

9. The purchase-money or compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity, and not having power to sell or convey such lands except under the provisions of this or the special Act, and the compensation to be paid for any permanent damage or injury to any such lands, shall not, except where the same shall have been determined by the verdict of a jury, or by arbitration, or by the valuation of a surveyor appointed by two justices under the provision hereinafter contained, be less than shall be determined by the valuation of two able practical surveyors, one of whom shall be nominated by the promoters of the undertaking, and the other by the other party, and if such two surveyors cannot agree in the valuation, then by such third surveyor as any two justices shall, upon application of either party, after notice to the other party, for that purpose nominate; and each of such two surveyors, if they agree, or if

Sect. 9. not, then the surveyor nominated by the said justices, shall annex to the valuation a declaration in writing, subscribed by them or him, of the correctness thereof; and all such purchase-money or compensation shall be deposited in the bank for the benefit of the parties interested, in manner hereinafter mentioned.

This section applies to compensation for injuriously affecting land not taken by the promoters as well as to compensation for taking lands; the words "injury to such lands" means injury to lands held by persons under disability (*Stone* v. *Yeovil Corporation* (1876), 2 C. P. D. 99). See *Ferrand* v. *Bradford Corporation* (1856), 21 Beav. 412, and *Bush* v. *Trowbridge Waterworks Co.* (1875), L. R. 10 Ch. 459, cited *ante*, p. 383. Where the certificates of two surveyors duly nominated had not been obtained, the court refused to decree specific performance at the instance of the company (*Wycombe Rail Co.* v. *Donnington Hospital* (1866), L. R. 1 Ch. 268). The absence of the declaration in writing by each surveyor will be fatal (*Bridgend Gas Co.* v. *Lord Dunraven* (1885), 31 Ch. D. 219).

It will invalidate the sale if trustees appoint one of themselves as surveyor to value the land under this section (*Peters* v. *Lewes, etc. Rail. Co.* (1881), 18 Ch. D. 429).

As to fixing the price when the sale is by trustees, see *ibid.*

See *Ex parte Rector of Adderley* (1863), 10 L. T. 131, where a valuation made by one valuer for both parties was required to be supplemented by an affidavit as to the sufficiency of the valuation.

When part of a churchyard had been taken the court allowed part of the money to be expended in the repair of the chancel (*In re L. C. C., Ex parte Pennington* (1901), 65 J. P. 536).

Where vendor absolutely entitled, lands may be sold on chief rents.

10. It shall be lawful for any person seised in fee of or entitled to dispose of absolutely for his own benefit any lands authorised to be purchased for the purposes of the special Act to sell and convey such lands or any part thereof unto the promoters of the undertaking in consideration of an annual rentcharge payable by the promoters of the undertaking [*but, except as aforesaid, the consideration to be paid for the purchase of any such lands, or for any damage done thereto, shall be in a gross sum*].

The words in italics are repealed by the Lands Clauses Act, 1860 (23 & 24 Vict. c. 106), s. 1; and by s. 2 of that Act, the provisions of ss. 10 and 11 of the Lands Clauses Act, as to power to sell, etc., lands for an annual rentcharge and as to power to recover such rentcharge, are extended to all sales or compensation where parties are under disability. Thus the annuity of a lunatic charged on the land may be purchased for a Government annuity (*In re Brewer* (1875), 1 Ch. D. 409). See the Act of 1860, *post*, p. 1254. When lands are sold in consideration of a rentcharge under this section, the parties may agree to its being secured by a power of entry (*Forster* v. *Manchester and Milford Rail Co.* (1880), 49 L. J. Ch. 454).

Payment of rents to be charged on tolls.

11. The yearly rents reserved by any such conveyance shall be charged on the tolls or rates, if any, payable under the special Act, and shall be otherwise secured in such manner as shall be agreed between the parties, and shall be paid by the promoters of the undertaking as such rents become payable; and if at any time any such rents be not paid within thirty days after they so become payable, and after demand thereof in writing, the person to whom any such rent shall be payable may either recover the same from the promoters of the undertaking, with costs of suit, by action of debt in any of the superior courts, or it shall be lawful for him to levy the same by distress of the goods and chattels of the promoters of the undertaking.

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Where a conveyance, made in consideration of a rentcharge, gave the person entitled to the rentcharge a power to distrain, the court gave leave to distrain notwithstanding a receiver had been appointed of the tolls, profits and income of the undertaking (*Eyton* v. *Denbigh, etc. Rail. Co.* (1869), L. R. 6 Eq. 14, 488; L. R. 7 Eq. 439). And see *In re Lord Gerard and Beecham's Contract,* [1894] 3 Ch. 295.

Power to purchase lands required for additional accommodation.

12. In case the promoters of the undertaking shall be empowered by the special Act to purchase lands for extraordinary purposes, it shall be lawful for all parties who, under the provisions herein-before contained, would be enabled to sell and convey lands, to sell and convey the lands so authorised to be purchased for extraordinary purposes.

Authority to sell and repurchase such lands.

13. It shall be lawful for the promoters of the undertaking to sell the lands which they shall have so acquired for extraordinary purposes, or any part thereof, in such manner, and for such considerations, and to such persons, as the promoters of the undertaking may think fit, and again to purchase other lands for the like purposes, and afterwards sell the same, and so from time to time; but the total quantity of land to be held at any one time by the promoters of the undertaking for the purposes aforesaid shall not exceed the prescribed quantity.

When a company bought land by agreement subject to a restrictive covenant limiting their statutory powers, it was held that they could sell under this section free from such restrictive covenant (*In re S. E. Rail. Co. and Wiffin's Contract,* [1907] 2 Ch. 366). *Cf. Stourcliffe Estate Co., Ld.* v. *Bournemouth Corporation,* [1910] 2 Ch. 12.

Restraint on purchase from incapacitated persons.

14. The promoters of the undertaking shall not, by virtue of the power to purchase land for extraordinary purposes, purchase more than the prescribed quantity from any party under legal disability, or who would not be able to sell and convey such lands except under the powers of this and the special Act; and if the promoters of the undertaking purchase the said quantity of land from any party under such legal disability, and afterwards sell the whole or any part of the land so purchased, it shall not be lawful for any party being under legal disability to sell to the promoters of the undertaking any other lands in lieu of the land so sold or disposed of by them.

Municipal corporations not to sell without the approbation of the Treasury.

15. Nothing in this or the special Act contained shall enable any municipal corporation to sell for the purposes of the special Act, without the approbation of the . . . treasury . . . any lands which they could not have sold without such approbation before the passing of the special Act, other than such lands as the company are by the powers of this or the special Act empowered to purchase or take compulsorily.

Certain words omitted repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

PURCHASE OF LANDS OTHERWISE THAN BY AGREEMENT.

And with respect to the purchase and taking of lands otherwise than by agreement, be it enacted as follows :

Capital to be subscribed before compulsory powers of purchase put in force.

16. When the undertaking is intended to be carried into effect by means of a capital to be subscribed by the promoters of the undertaking, the whole of the capital or estimated sum for defraying the expenses of the undertaking shall be subscribed under contract binding the parties thereto, their heirs, executors, and administrators for the payment of the several sums by them respectively subscribed, before it shall be lawful to put in force any of the powers of this or the special Act, or any Act incorporated therewith, in relation to the compulsory taking of land for the purposes of the undertaking.

Sects. 16 and 17 do not apply to the case of an existing company authorised to construct further works and to raise further capital (*Weld* v. *L. & S. W. Rail. Co.* (1863), 32 Beav. 340). See also *R.* v. *G. W. Rail. Co.* (1853), 1 E. & B. 253. The plans deposited need not specify the particular works which it is proposed to make on the land to be taken. It is sufficient if the land be within the limits of deviation delineated on the plan (*Weld* v. *L. & S. W. Rail. Co., supra*). The land must not be taken for any purpose other than that sanctioned (*Galloway* v. *London Corporation* (1866), L. R. 1 H. L. 34). Thus where a corporation were empowered to make certain street works and to take compulsorily "for the purpose of the street works, the lands shown on the deposited plans in connection therewith and which they may require for the purposes thereof respectively," it was held, that upon the construction of the Act certain lands fronting the new line of street which the corporation desired to take being required not for the construction of the street works, but merely for the purpose of re-sale at a profit so as to reduce the cost of the street works, could not be taken by the corporation under their statutory powers (*Donaldson* v. *South Shields Corporation* (1899), 79 L. T. 685) ; and see *Denman & Co., Ltd.* v. *Westminster Corporation*, [1906] 1 Ch. 464. Where a company has given notice to take land for some object which is clearly within their compulsory powers, the court will not interfere to restrain them merely on the ground that they might attain the same object in some other way without taking the land (*Lamb* v. *N. L. Rail. Co.* (1869), L. R. 4 Ch. 522). The court will accept, as conclusive, the evidence of the engineer in the service of the company as to the quantity of land required for the purposes of the undertaking, if the statement has a reasonable appearance of accuracy (*Kemp* v. *S. E. Rail. Co.* (1872), L. R. 7 Ch. 364 ; *Errington* v. *Metropolitan District Rail. Co.* (1882), 19 Ch. D. 559 ; and *cf. Lynch* v. *Commissioners of Sewers* (1886), 32 Ch. D. 72). If notice to treat be given, the landowner may compel the company to proceed to assess the compensation, notwithstanding the capital has not been subscribed (*Guest* v. *Poole and Bournemouth Rail. Co.* (1870), L. R. 5 C. P. 553 ; *cf. R.* v. *G. W. Rail. Co.* (1853), 1 E. & B. 253 ; and *R.* v. *Ambergate Rail. Co.* (1853), 1 E. & B. 372).

The making of crossings, by means of a tunnel or a bridge, by one railway company under or over the line of another, is not a taking of land within this section (*G. W. Rail. Co.* v. *Swindon Rail. Co.* (1884), 9 App. Cas. 787, and *Pinchin* v. *London and Blackwall Rail. Co.* (1854), 24 L. J. Ch. 417).

Where the legislature confers powers on any body, whether one which is seeking to make a profit for shareholders or one acting solely for the public good, to take lands compulsorily for a particular purpose, it is on the ground that the using of that land for that purpose will be for the public good ; and a contract purporting to bind such a body and their successors not to use those powers is void (*Ayr Harbour Trustees* v. *Oswald* (1883), 8 App. Cas. 623).

When the legislature authorises a company to take for the purposes of their undertaking any lands specially described in their Acts, it constitutes them judges whether they will or will not take those lands, provided that they act with the *bonâ fide* object of using the lands for the purpose authorised by the Act, and not for any sinister or collateral purpose. Having provided for affording compensation to the owners of the lands, the legislature leaves it to the company to determine what lands are necessary to be taken (*Stockton and Darlington Rail. Co.* v. *Brown* (1860), 9 H. L. Cas. 246). See also *Kemp* v. *S. E. Rail. Co.* (1872), L. R. 7 Ch. 364. Companies are not entitled to take compulsorily land required only for the purpose of excavating materials therefrom, although within the limits of deviation (*Eversfield* v. *Mid Sussex Rail. Co.* (1858), 3 De G. & J. 286; *Bentinck* v. *Norfolk Estuary Co.* (1857), 8 De G. M. & G. 714). See also *Michael* v. *Edinburgh Magistrates* (1895), 3 S. L. T. 158.

An agreement, by a landowner, with the promoters of a railway company, that in the event of their obtaining an Act of Parliament he will sell them such land as they require at a fixed rate, is binding upon him, although the company has no existence at the time of the contract; and it is no objection, on the ground of want of mutuality, that the company are not bound to take the land. If, however, the company exercise their compulsory powers and take proceedings under the sections in the Lands Clauses Consolidation Act relating to the purchase of lands otherwise than by agreement, they cannot afterwards enforce the agreement (*Bedford and Cambridge Rail. Co.* v. *Stanley* (1863), 2 J. & H. 746).

A Bill proposed to take a house and sixty acres of land, part of an estate of 5,000 acres. The owners opposed and obtained the insertion of the following clause: "The company shall, if so required by the trustees of the Ramshope and Whitelee estates forming portion of the Pawson estates or by the other owners thereof for the time being by notice in writing within two years from the passing of this Act, purchase the whole of the said Ramshope and Whitelee estates for such amount and upon such terms as may be agreed upon, or, failing agreement, as may be determined by arbitration under and according to the provisions of the Lands Clauses Acts." The notice in writing having been given within the two years limited, the umpire awarded £40,139 as purchase money and £8,152 as and for compensation in respect of the trustees' claim for being compulsorily required to sell. Upon the construction of the special clause, NORTH, J., held that the purchase was not compulsory, and the Court of Appeal took the same view (*Jervis* v. *Newcastle and Gateshead Water Co.* (1897), 13 T. L. R. 312).

17. A certificate under the hands of two justices, certifying that the whole of the prescribed sum has been subscribed, shall be sufficient evidence thereof; and on the application of the promoters of the undertaking, and the production of such evidence as such justices think proper and sufficient, such justices shall grant such certificate accordingly.

A certificate of two justices to be evidence that the capital has been subscribed.

The certificate given under the section is, except perhaps in the case of fraud, conclusive (*Ystalyfera Iron Co.* v. *Neath and Brecon Rail. Co.* (1873), L. R. 17 Eq. 142). See also as to this section, *Weld* v. *L. & S. W. Rail. Co.* cited *supra*, p. 1166.

A certificate was granted at the Mansion House, London, in a case where the whole of the debenture stock and capital stock were issued to a contractor who, in consideration thereof agreed to acquire the land, make the way and take over the liabilities of the company, see 66 J. P. 490 (1902).

18. When the promoters of the undertaking shall require to purchase or take any of the lands which by this or the special Act, or any Act incorporated therewith, they are authorised to purchase or take, they shall give notice thereof to all the parties interested in such lands, or to the parties enabled by this Act to sell and convey or release the same,

Notice of intention to take lands.

Sect. 18. or such of the said parties as shall, after diligent inquiry, be known to the promoters of the undertaking, and by such notice shall demand from such parties the particulars of their estate and interest in such lands, and of the claims made by them in respect thereof; and every such notice shall state the particulars of the lands so required, and that the promoters of the undertaking are willing to treat for the purchase thereof, and as to the compensation to be made to all parties for the damage that may be sustained by them by reason of the execution of the works.

Notice has the effect of a contract.

A notice to treat under this section constitutes the relation of vendor and purchaser as between a company and the landowner (*Doo* v. *London and Croydon Rail. Co.* (1839), 1 Rail. Cas. 257), whether such notice be given by trustees under an Act of Parliament for a public purpose, or by a company formed for a private speculation (*Steele* v. *Liverpool* (1866), 7 B. & S. 261). See also *Sparrow* v. *Oxford, etc. Rail. Co.* (1852), 2 De G. M. & G. 94, and *Edinburgh, Perth and Dundee Rail. Co.* v. *Leven* (1852), 1 Macq. H. L. Cas. 284. Accordingly, where a notice has once been given, the company cannot abandon it without the consent of the landowner (*R.* v. *Hungerford Market Co.* (1832), 4 B. & Ad. 327), even though there are other interests as to which no notice to treat has been given (*Morgan* v. *Metropolitan Rail. Co.* (1868), L. R. 4 C. P. 97). Nor can the company abandon such notice as to part, and give a valid fresh notice as to the residue (*Tawney* v. *Lynn and Ely Rail. Co.* (1847), 16 L. J. Ch. 282). Where notice to treat has been given and the price fixed, the relation of the parties as vendor and purchaser is as fully constituted as in the case of a regular and formal agreement, and the vendor is entitled to insist upon the purchaser taking a duly executed conveyance of the land (*In re Cary-Elwes' Contract*, [1906] 2 Ch. 143). But where the company has given notice to take a part of a property, and a counter-notice is given requiring them to take the whole, the company may abandon their notice and refuse to take any part (*King* v. *Wycombe Rail. Co.* (1860), 28 Beav. 104). As to the meaning of the word "take," see *Spencer* v. *Metropolitan B. of W.* (1882), 22 Ch. D. 142. As to equitable interests, see *Martin* v. *L. C. & D. Rail. Co.* (1866), L. R. 1 Ch. 501, and *Rogers* v. *Hull Dock Co.* (1864), 34 L. J. Ch. 165).

Where a notice to treat was served in respect of a portion of forty-nine plots of land which were the subject-matter of a building agreement in the usual form it was held that the agreement was severable, and was not determined by the service of the notice to treat, but remained binding upon the parties thereto as to the plots to which the notice did not extend (*In re Furness and Willesden U. D. C.* (1906), 1 J. P. 25; and see *Piggott* v. *Middlesex C. C.*, [1909] 1 Ch. 134). A service of a notice to treat for minerals which are required to be left unworked has the same effect as a notice to treat under this section (*Clippens Oil Co.* v. *Edinburgh and District Water Trustees* (1901), 3 F. 1113 affirmed, H. of L., [1902] W. N. 157).

When promoters have by agreement acquired a certain amount of land from a lessor, the lessee cannot insist on the promoters giving him notice to treat for the same amount if for the time being they do not require it (*Stevenson* v. *North British Rail. Co.* (1901), 4 F. (Ct. of Sess. Cas.) 224).

A company wishing to take land may divide it into two portions and serve a notice in respect of each portion; and the service of one notice afterwards withdrawn, does not preclude the company from serving another notice in respect of the same land (*Coats* v. *Caledonian Rail. Co.* (1905), 6 F. 1042 Ct. of Sess.).

Taking additional lands.

After one notice to treat, the company may give a second in respect of other land belonging to the same landowner, as the first notice is not considered to have exhausted their powers (*Stamps* v. *Birmingham, etc. Rail. Co.* (1848), 7 Hare, 251; *S. C.*, on appeal, 2 Phil. 673; *Simpson* v. *Lancaster, etc. Rail. Co.* (1847), 15 Sim. 580; *Maule* v. *Moncrieffe* (1846), 5 Bell App. Cas. (Sc.)

333; and *Sadd* v. *Maldon, etc. Rail. Co.* (1851), 20 L. J. Ex. 102). If a notice to treat is served and validly withdrawn by the promoters, the parties are relegated to their original positions and the promoters can serve a second notice in regard to the same land (*Ashton Vale Iron Co., Ltd.* v. *Bristol Corporation,* [1901] 1 Ch. 591).

The service of notice to treat by a local authority upon a landowner under the compulsory powers of Michael Angelo Taylor's Act, in order to acquire property for the purpose of widening a street, does for some purposes create the relationship of vendor and purchaser. The landowner must either treat the notice as a contract to purchase the lands as a whole or repudiate it; he cannot accept it in part and repudiate it in part. Where a landowner has repudiated the validity of a notice to treat, the local authority is entitled to withdraw it altogether, and cannot be compelled to proceed with that part of it which is acceptable to the landowner. In such a case no compensation by way of damages will be given to the landowner (*Wild* v. *Woolwich Borough Council,* [1910] 1 Ch. 35).

Underground railway.

A special Act (incorporating the Lands Clauses Consolidation Act, 1845), authorised a railway company to construct an underground railway, and provided that, with respect to certain lands belonging to the plaintiff, the company should not be required wholly to take them, but might "appropriate and use the subsoil and under-surface," subject, however, to the liability to make compensation under s. 68 of the Lands Clauses Act. The company commenced boring through the subsoil of the plaintiff's land for the purpose of making a tunnel, but without having given him notice, under s. 18 of the Lands Clauses Act, to treat for the purchase of the subsoil so used:—*Held*, that the company were taking not merely an easement, but "land"; that "appropriate" meant "appropriate by way of purchase"; and that therefore they could not "appropriate and use" the subsoil without first complying with the provisions of the Lands Clauses Act as to the purchase of land. *Semble*, s. 84 and following sections of the Lands Clauses Act as to the deposit of purchase-money in case of entry on lands before agreement, apply to the appropriation and user of subsoil under a special Act such as that above mentioned (*Farmer* v. *Waterloo and City Rail. Co.*, [1895] 1 Ch. 527).

Effect of delay.

After great delay in proceeding on notices to treat, they will be considered as abandoned (*Hedges* v. *Metropolitan Rail. Co.* (1860), 28 Beav. 109); and see *Richmond* v. *North London Rail. Co.* (1868), L. R. 3 Ch. 679; *Ex parte Quicke* (1865), 13 W. R. 924; and *Stretton* v. *G. W., etc. Rail. Co.* (1870), L. R. 5 Ch. 751.

Stamp.

The notice does not require to be stamped as an agreement (*Rawlings* v. *Metropolitan Rail. Co.* (1868), 37 L. J. Ch. 824).

Description of lands in notice.

As to what is a sufficient description in the notice of the property to be taken, see *Simms* v. *Commercial Rail. Co.* (1838), 1 Rail. Cas. 431.

Effect of notice on dealings with land.

After receipt of a notice to treat, a landowner cannot deal with the land in respect of which the notice is given, or with land held therewith, so as to increase the burdens of the promoters as regards the compensation to be made in respect of such land or any of it (*Mercer* v. *Liverpool, St. Helens and South Lancashire Rail. Co.*, [1904] A. C. 461, *per* Lord LINDLEY, at p. 465. Subject to the foregoing qualification, he may sell or convey it or otherwise deal with it (*Dawson* v. *G. N. and City Rail. Co.*, [1905] 1 K. B. 260, at pp. 268, 269; *Sewell* v. *Harrow and Uxbridge Rail. Co.* (1902), 19 T. L. R. 130. *Cf. Metropolitan Rail. Co.* v. *Woodhouse* (1865), 34 L. J. Ch. 297). By an agreement dated March 15th, 1905, one F., as agent for the mortgagees in possession of certain premises, let the premises to one S. for three years from March 14th, 1905. On May 15th, 1905, notice to treat under this Act in respect of the premises was served by the defendants on the lessors. By an agreement dated January 23rd, 1906, S. agreed to stand possessed of the lease of the premises in trust for the plaintiff, and in February the plaintiff entered upon the premises. Subsequently S. informed F., the lessors' agent, that he wished to transfer his interest to the plaintiff,

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and it was arranged between S., the plaintiff, and F., that the old tenancy should be surrendered and a new tenancy should be granted to the plaintiff for a term of three years, being about a year longer than the residue of the former term. Accordingly, on February 14th, 1906, an agreement was entered into by which F., as the lessor's agent, let the premises to the plaintiff for three years from that date :—*Held*, that either the plaintiff, or S. as trustee for him, was entitled to compensation in respect of the tenancy under the original agreement of March 15th, 1905, which still subsisted, in the absence of a valid surrender of it (*Zick* v. *London United Tramways, Ltd.*, [1908] 2 K. B. 126). If the notice relates to part only of a parcel of land, a building agreement in regard thereto, if severable, will apply to the remainder (*Furness* v. *Willesden U. D. C.* (1905), 70 J. P. 25; *Piggott* v. *Middlesex C. C.*, [1909] 1 Ch. 134).

What land may be taken.

" Delineated."

A corporation acting under an improvement Act, not for profit, may take all the property in the schedule to the Act, although not actually required for the purpose specified in the Act (*Quinton* v. *Bristol Corporation* (1874), L. R. 17 Eq. 524). But it always rests on the promoters to show that they are not taking more than their Act allows, and any doubt the landowner must have the benefit of (*Simpson* v. *South Staffordshire Waterworks Co.* (1865), 4 De. G. J. & S. 679). See further cases cited under s. 16, *ante*, p. 1166. If the excess taken by a company beyond what they have parliamentary powers for is very small, the court will not grant an injunction against them (*Dowling* v. *Pontypool, Caerleon and Newport Rail. Co.* (1874), L. R. 18 Eq. 714). As to the question what deviation a company may make, and the evidence admissible to explain the statutory plans, see *ibid.*, and *Protheroe* v. *Tottenham and Forest Gate Rail. Co.*, [1891] 3 Ch. 278 ; see also *West Highland Rail. Co.* v. *Place* (1894), 21 R. 576.

Taking of streams, etc.

As to the taking of streams, etc., see *Bush* v. *Trowbridge Waterworks Co.*, and other cases cited *ante*, p. 383.

Enforcing the contract created by the notice.

The landowner is entitled to proceed by *mandamus* to compel the company to issue their warrant to assess compensation (*R.* v. *Hungerford Market Co.* (1832), 4 B. & Ad. 327 ; and see notes to s. 39, *post*). The landowner may proceed by action for a *mandamus* to the company to issue their warrant (*Fotherby* v. *Metropolitan Rail. Co.* (1866), L. R. 2 C. P. 188 ; *Morgan* v. *Metropolitan Rail. Co.* (1868), L. R. 4 C. P. 97); see Judicature Act, 1873, s. 25 (8). Where a company has given notice to take lands under its compulsory powers, and the price is fixed, the Court of Chancery will entertain a suit for specific performance (*Regent's Canal Co.* v. *Ware* (1857), 23 Beav. 575; and see *Inge* v. *Birmingham, etc. Rail. Co.* (1853), 1 Sm. & G. 347 ; affirmed, 3 De G. M. & G. 658 ; *Mason* v. *Stokes Bay Pier, etc. Co.* (1862), 32 L. J. Ch. 110 ; *Harding* v. *Metropolitan Rail. Co.* (1872), L. R. 7 Ch. 154 ; *cf. Lind* v. *Isle of Wight Ferry Co.* (1862), 7 L. T. 416). In an early case, *Walker* v. *Eastern Counties Rail. Co.* (1848), 6 Hare, 594, it had been held that a bill for specific performance would lie even where the price had not been agreed upon ; but this decision was not followed in *Hill* v. *G. N. Rail. Co.* (1854), 23 L. J. Ch. 524 ; nor in *Haynes* v. *Haynes* (1861), 1 Dr. & Sm. 426 ; and see also *Adams* v. *London and Blackwall Rail. Co.* (1850), 2 Mac. & G. 118. A notice by the company that they will apply for a surveyor under s. 36 of the Railway Companies Act, 1867 (30 & 31 Vict. c. 127), does not so bind the company as to prevent their withdrawing their notice to treat for part only of a manufactory upon receiving counter-notice to take the whole (*Grierson* v. *Cheshire Lines Committee* (1874), L. R. 19 Eq. 83). As to the requirements of the Statute of Frauds regarding writing, see *Watts* v. *Watts* (1873), L. R. 17 Eq. 217, and *Ex parte Hawkins* (1843), 13 Sim. 569 ; *cf. Haynes* v. *Haynes* (1861), 1 Dr. & Sm. 426. A notice to treat with lessees will not exonerate them from liability for breaches of covenant committed after such notice, but before assignment to the company (*Mills* v. *East London Union* (1872), L. R. 8 C. P. 79). A company authorised to make a line of railway under a public street is not bound to give notice to treat or to pay compensation to the adjoining owners in whom the soil of the street is vested (*Souch* v. *East London Rail. Co.* (1873), L. R. 16 Eq. 108), and a *cul-de-sac*, if dedicated to the public, is a street for that purpose (*ibid.*). A notice to treat having been given, and particulars accordingly furnished by the landowner, who claimed £4,500 as compensation, and requiring payment thereof, or that a warrant should be issued by the company to summon a jury to assess the amount, the company took no further step in the matter; it was held, that the landowner could not maintain an action to recover the £4,500 (*Burkinshaw* v. *Birmingham and Oxford Junction Rail. Co.* (1850), 5 Ex. 475). A company which has taken and paid for leaseholds may be compelled within a reasonable time by the lessee to accept an assignment containing the usual covenants (*Harding* v. *Metropolitan Rail. Co.* (1872), L. R. 7 Ch. 154). Although the court will grant specific performance where a notice to treat has been given and the price fixed, it will not restrain the running of trains over the land until payment of the price in order to enforce the vendor's lien (*Lycett* v. *Stafford and Uttoxeter Rail. Co.* (1872), L. R. 13 Eq. 261; *Munns* v. *Isle of Wight Rail. Co.* (1870), L. R. 5 Ch. 414). The right to be paid compensation under a notice to treat may be assigned and dealt with as property (*Dawson* v. *Great Northern and City Rail. Co., supra*), but this sum which became due is not "a debt owing or accruing," which can be attached under R. S. C., O. 45, r. 2 (*Richardson* v. *Elmit* (1876), 2 C. P. D. 9).

As to the case where a landowner is a lunatic, see *Re Brewer* (1875), 1 Ch. D. 409; *Re Milnes* (1875), 1 Ch. D. 28.

Where premises were purchased by the defendants, and they gave a quarterly tenant notice to quit, it was held that such a tenant had no interest in the premises within the meaning of s. 18 (*Syers* v. *Metropolitan B. of W.* (1877), 36 L. T. 277; and see *Ex parte Nadin* (1848), 17 L. J. Ch. 421). Where promoters have by agreement acquired a certain amount of land from a lessor the lessee cannot insist on the promoters giving him notice to treat for the same amount if for the time being they do not require it (*Stevenson* v. *North British Rail. Co.* (1901), 4 F. (Ct. of Sess.) 224). See s. 121, *post.*

When land is taken under compulsory powers, it is taken absolutely and free of all easements or servitudes, unless it be otherwise provided in the special Act (*Oban Town Council* v. *Callander and Oban Rail. Co.* (1892), Ct. of Sess. Cas., 19 Rettie, 912).

Calculation of period for giving notice to treat.

When, in a statute or otherwise, a term of years is fixed for the doing of an Act, *e.g.*, giving notice to treat, the day of the passing of the Act must be excluded in the computation of the time (*Goldsmiths' Co.* v. *West Metropolitan Rail. Co.*, [1904] K. B. 1; and see *Lester* v. *Garland* (1808), 15 Ves. 248; and *Russell* v. *Ledsam* (1845), 14 M. & W. 574).

Service of notices on owners and occupiers of lands.

19. All notices required to be served by the promoters of the undertaking upon the parties interested in or entitled to sell any such lands shall either be served personally on such parties or left at their last usual place of abode, if any such can after diligent inquiry be found, and in case any such parties shall be absent from the United Kingdom, or cannot be found after diligent inquiry, shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

As to irregularity of notice and how the same may be cured, see *Shepherd* v. *Corporation of Norwich* (1885), 30 Ch. D. 553.

A notice served on a landlord does not bind his tenant, and does not therefore, as regards the tenant, bind the promoters (*R.* v. *Great Northern Rail. Co.* (1876), 2 Q. B. D. 151).

Service of notice on a corporation aggregate.

20. If any such party be a corporation aggregate such notice shall be left at the principal office of business of such corporation, or, if no such office can after diligent inquiry be found, shall be served on some principal member, if any, of such corporation, and such notice shall also be

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If parties fail to treat, or in case of dispute, question to be settled as after mentioned.

21. If for twenty-one days after the service of such notice any such party shall fail to state the particulars of his claim in respect of any such land, or to treat with the promoters of the undertaking in respect thereof, or if such party and the promoters of the undertaking shall not agree as to the amount of the compensation to be paid by the promoters of the undertaking for the interest in such lands belonging to such party, or which he is by this or the special Act enabled to sell, or for any damage that may be sustained by him by reason of the execution of the works, the amount of such compensation shall be settled in the manner hereinafter provided for settling cases of disputed compensation.

Disputes as to compensation where the amount claimed does not exceed £50 to be settled by two justices.

22. If no agreement be come to between the promoters of the undertaking and the owners of or parties by this Act enabled to sell and convey or release any lands taken or required for or injuriously affected by the execution of the undertaking, or any interest in such lands, as to the value of such lands of or any interest therein, or as to the compensation to be made in respect thereof, and if in any such case the compensation claimed shall not exceed fifty pounds, the same shall be settled by two justices.

In 1851 it was decided that an order of justices under this section was within the 11 & 12 Vict. c. 43, s. 1, and was bad under s. 11 if the complaint on which the order is founded was made more than six calendar months after the cause of complaint arose (*Re Edmundson* (1851), 17 Q. B. 67). In 1884, however, this decision was overruled by the Court of Appeal in *R.* v. *Edwards* (1884), 13 Q. B. D. 586. See note to s. 121, *post*, p. 1236.

In Scotland the sheriff is substituted for the justices under this section. See *Glasgow District Subway Co.* v. *Esselmont* (1895), 22 Rettie, 658.

Compensation exceeding £50 to be settled by arbitration or jury, at the option of the party claiming compensation.

23. If the compensation claimed or offered in any such case shall exceed fifty pounds, and if the party claiming compensation desire to have the same settled by arbitration, and signify such desire by notice in writing to the promoters of the undertaking, before they have issued their warrant to the sheriff to summon a jury in respect of such lands, under the provisions hereinafter contained, stating in such notice the nature of the interest in respect of which such party claims compensation, and the amount of the compensation so claimed, the same shall be so settled accordingly; but unless the party claiming compensation shall as aforesaid signify his desire to have the question of such compensation settled by arbitration, or if when the matter shall have been referred to arbitration the arbitrators or their umpire shall for three months have failed to make their or his award, or if no final award shall be made, the question of such compensation shall be settled by the verdict of a jury, as hereinafter provided.

When the parties agree to refer the amount of compensation to arbitration, it is not necessary for the landowner to go through the form of signifying his desire in writing as provided for by this section (*Collins* v. *South Staffordshire Rail. Co.* (1851), 7 Ex. 5; *In re South Yorkshire, etc. Rail. Co.* (1849), 7 D. & L. 36).

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The three months allowed to the arbitrators or their umpire for making their award is not one and the same period; but the umpire has a new period of three months for making his award, from the time when the arbitration devolves upon him (*Skerratt* v. *North Staffordshire Rail. Co.* (1848), 2 Phil. 475; *Bradshaw's Arbitration* (1848), 12 Q. B. 562). See also *In re South Yorkshire, etc. Rail. Co., supra*, and *Cromford Canal Co.* v. *Cutts* (1848), 5 Rail. Cas. 442; *In re Pullen and Liverpool Corporation* (1882), 51 L. J. Q. B. 285.

No action lies upon an award made after the three months (*Evans* v. *Lancashire and Yorkshire Rail. Co.* (1853), 1 E. & B. 754; but the parties may by consent enlarge the time beyond the three months, and, if so, the award will not be set aside on the ground that it was not made within the prescribed period (*Palmer* v. *Metropolitan Rail. Co.* (1862), 31 L. J. Q. B. 259).

The court may enlarge the time after the award has been made and so make it valid (*Knowles & Son, Ltd.* v. *Bolton Corporation*, [1900] 2 Q. B. 253).

Sect. 23 applies as well to arbitrations under s. 68 for claims for damages to lands injuriously affected as to arbitrations for claims for land intended to be taken (*Evans* v. *Lancashire and Yorkshire Rail. Co., supra*).

A reference to arbitration under this section and s. 25 is a submission to arbitration by consent within the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), s. 17 (*Ex parte Harper* (1874), L. R. 18 Eq. 539), and the arbitrator may state a special case (*Rhodes* v. *Airedale Drainage Commissioners* (1876), 1 C. P. D. 402; *In re Harper and G. E. Rail. Co.* (1875), L. R. 20 Eq. 39; and *In re Dare Valley Rail. Co.* (1869), L. R. 4 Ch. 554). See now the Arbitration Act, 1889 (52 & 53 Vict. c. 49), which applies to references under statutory powers as well as to other references, and contains wide powers as to statement of a special case, and enlarging the time for making an award. See ss. 7, 9, 18, and 24. The latter section provides:

> "This Act shall apply to every arbitration under any Act passed before or after the commencement of this Act as if the arbitration were pursuant to a submission, except in so far as this Act is inconsistent with the Act regulating the arbitration or with any rules or procedure authorised or recognised by that Act."

The Arbitration Act, 1889, does not apply to Scotland or Ireland.

An arbitrator cannot be directed by the court or a judge to state a special case for the opinion of the court, under s. 10 of the Arbitration Act, 1889, when no request or application to state a case is made before the award has been made and the arbitration concluded. An award will not be remitted for the reconsideration of an arbitrator upon the sole ground that the arbitrator has made a mistake in law. *Quære*, whether an agreement that the parties to an arbitration will not ask that a special case shall be stated for the opinion of the court, is valid (*In re an Arbitration between Montgomery, Jones & Co. and Liebenthal & Co.* (1898), 78 L. T. 406).

Where the parties have acted under an award they are usually estopped from setting it aside (*Ex parte Harrison* (1849), 13 Jur. (N.S.) 381).

Where lands have been taken, a claimant, in order to bring himself within this section, must give in his claim such reasonable information as to his interest as will enable the company to judge whether they will pay the whole claim, or what amount they ought to offer; and where the claimant holds under a lease for years it is not sufficient to state that he holds "under a lease" (*Healey* v. *Thames Valley Rail. Co.* (1864), 5 B. & S. 769). See *In re North Staffordshire Rail. Co.* (1848), 2 Ex. 235. *Cf. Cameron* v. *Charing Cross Rail. Co.* (1864), 16 C. B. (N.S.) 430).

The landowner does not lose his right to have the compensation assessed by a jury under s. 23 because he has made no claim, and because the company has proceeded under s. 85. They must have actually paid or tendered

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the money, or the owner may claim to go on under s. 23 or s. 68. And if the assignee of a bankrupt mortgagor will not concur, this is ground for proceeding under s. 110 (*R.* v. *Metropolitan Rail. Co.* (1866), 13 L. T. 444).

The arbitrators' powers are confined to assessing compensation in money, and do not enable them to set out approaches, or provide for rights of way (*Re Ware* (1854), 9 Ex. 395; *Re Byles* (1855), 11 Ex. 464).

By the Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), s. 41, questions of compensation may be tried in the superior courts by issue directed for the purpose. For instances where the parties have availed themselves of this power, see *New River Co.* v. *Midland Rail. Co.* (1877), 36 L. T. 539; *In re East London Rail. Co., Oliver's Claim* (1890), 24 Q. B. D. 507; and *Re Donisthorpe and M. S. & L. Rail. Co.*, [1897] 1 Q. B. 671.

As to interest on compensation money, see *Birch* v. *Joy* (1851), 3 H. L. C. 565; *Caledonian Rail. Co.* v. *Carmichael* (1870), L. R. 2 H. L. (Sc.) 56; *Fletcher* v. *Lancashire and Yorkshire Rail. Co.*, [1902] 1 Ch. 901; *Re Richard and G. W. Rail. Co.*, [1905] 1 K. B. 68.

Under clause (c) of Sched. I. to the Arbitration Act, 1889 (52 & 53 Vict. c. 49), it has been decided that where a notice is served upon arbitrators by one of the parties to the arbitration to appoint an umpire, they are "called upon to act" in the matter of the arbitration within the meaning of that clause, and the three months within which the arbitrators are by that clause bound to make their award run from the service of that notice upon them (*Baring Gould* v. *Sharpington Combined Pick and Shovel Syndicate*, [1899] 2 Ch. 80).

Method of proceeding for settling disputes as to compensation by justices.

24. It shall be lawful for any justice, upon the application of either party with respect to any question of disputed compensation by this or the special Act, or any Act incorporated therewith, authorised to be settled by two justices, to summon the other party to appear before two justices, at a time and place to be named in the summons, and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such justices to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, upon oath, and the costs of every such inquiry shall be in the discretion of such justices, and they shall settle the amount thereof.

The justices' decision need not be reduced into writing (*R.* v. *Combe* (1863), 32 L. J. M. C. 67). As to the time within which the order of the justices must be made, see *R.* v. *Edwards* (1884), 13 Q. B. D. 586. See note to s. 22.

Appointment of arbitrator when questions are to be determined by arbitration.

25. When any question of disputed compensation by this or the special Act, or any Act incorporated therewith, authorised or required to be settled by arbitration shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party on the request of the other party, shall nominate and appoint an arbitrator, to whom such dispute shall be referred; and every appointment of an arbitrator shall be made on the part of the promoters of the undertaking under the hands of the said promoters or any two of them, or of their secretary or clerk, and on the part of any other party under the hand of such party, or if such party be a corporation aggregate under the common seal of such corporation; and such appointment shall be

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delivered to the arbitrator, and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party act as a revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing, in which shall be stated the matter so required to be referred to arbitration, shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute, and in such case the award or determination of such single arbitrator shall be final.

Notice to a landowner of an intention to appoint an arbitrator is not enough, the appointment must be actually made (*Bradley* v. *L. & N. W. Rail. Co.* (1850), 5 Ex. 769).

Where a company appointed their surveyor as arbitrator for them, and the landowner, knowing the fact, proceeded with the arbitration, though protesting against the appointment, it was held that by proceeding he had waived the objection (*In re Elliott and South Devon Rail. Co.* (1848), 2 De G. & Sm. 17).

An arbitrator may employ an expert to assist him, and in general may consult men of science, if necessary. He may award prospective and contingent damages. He may include damages likely to be caused to the landowner's tenants (*Caledonian Rail. Co.* v. *Lockhart* (1860), 3 Macq. H. L. Cas. 808).

See Arbitration Act, 1889 (52 & 53 Vict. c. 49), cited under s. 23.

Where an award is in the express and distinct words of the reference, and the words are not ambiguous, it is not competent to enter upon inquiry whether the arbitrator understood the whole scope of his award (*Highland Rail. Co.* v. *Great North of Scotland Rail. Co.*, [1896] W. N. 77; Ct. of Sess. Cas., 23 Rettie (H. L.), 80).

Vacancy of arbitrator to be supplied.

26. If before the matters so referred shall be determined any arbitrator appointed by either party die, or become incapable, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place, and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so, the remaining or other arbitrator may proceed ex parte; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death or disability as aforesaid.

Appointment of umpire.

27. Where more than one arbitrator shall have been appointed such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ, or which shall be referred to him under the provisions of this or the special Act; and if such umpire shall die, or become incapable to act, they shall forthwith after such death or incapacity appoint another umpire in his place; and the

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Where one arbitrator refuses or neglects for seven days to concur in the appointment of an umpire, the other arbitrator has power under s. 30 to proceed *ex parte*, and the previous appointment of an umpire is not in such a case a condition precedent to the *ex parte* proceedings (*Shepherd* v. *Corporation of Norwich* (1885), 30 Ch. D. 553).

It is not necessarily an objection on the ground of bias to the award of an umpire in an arbitration under the Lands Clauses Acts, to determine the value of land compulsorily taken that, during the pendency of the arbitration, and before making his award, he has given evidence on behalf of one of the parties in another inquiry as to the value of other land taken for the same purposes and under the same parliamentary powers (*In re Haigh and L. & N. W. Rail. Co.*, [1896] 1 Q. B. 649).

Board of Trade empowered to appoint an umpire on neglect of the arbitrators, in case of railway companies.

28. If in either of the cases aforesaid the said arbitrators shall refuse, or shall for seven days after request of either party to such arbitration neglect to appoint an umpire, the Board of Trade [*in any case in which a railway company shall be one party to the arbitration, and two justices in any other case,*] shall, on the application of either party to such arbitration, appoint an umpire ; and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special Act, shall be final.

The words in italics are repealed by the Lands Clauses (Umpire) Act, 1883, *post*, p. 1258. As to the mode of such appointment by the Board of Trade, see 14 & 15 Vict. c. 64, s. 3. See Arbitration Act, 1889, ss. 2, 24.

In case of death of single arbitrator the matter to begin de novo.

29. If when a single arbitrator shall have been appointed such arbitrator shall die or become incapable to act before he shall have made his award, the matters referred to him shall be determined by arbitration, under the provisions of this or the special Act, in the same manner as if such arbitrator had not been appointed.

If either arbitrator refuse to act the other to proceed ex parte.

30. If where more than one arbitrator shall have been appointed either of the arbitrators refuse or for seven days neglect to act, the other arbitrator may proceed ex parte, and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

As to what amounts to a refusal to act, see *Hawley* v. *North Staffordshire Rail. Co.* (1848), 2 De G. & S. 33.

If arbitrators fail to make their award within twenty-one days the matter to go to the umpire.

31. If where more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time (if any) as shall have been appointed for that purpose by both the arbitrators under their hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid.

The extended time here referred to must be considered in relation to s. 33, which fixes a limit at three months.

The umpire's three months commence to run from the time of the duty devolving upon him (*Bradshaw's Arbitration* (1848), 12 Q. B. 562 ; *cf. In re Pullen and Liverpool Corporation* (1882), 51 L. J. Q. B. 285, and see notes to s. 23, *ante*, p. 1172).

Power of arbitrators to call for books, etc.

32. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party, which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

The evidence before an arbitrator ought to be taken on oath; but the parties may waive this solemnity (*Wakefield* v. *Llanelly Rail. and Dock Co.* (1864), 34 Beav. 245). See Arbitration Act, 1889, s. 7. Where, during the arbitration, the arbitrator appointed by the company sent notice that he could not attend, and the other arbitrator and the umpire went on with the case (notwithstanding the company's solicitor protested and withdrew), and the umpire made an award, the award was set aside (*Hawley* v. *North Staffordshire Rail. Co.*, *supra*). As to compelling the attendance of witnesses, see the Arbitration Act, 1889, s. 18.

Arbitrator or umpire to make a declaration.

33. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him, he shall in the presence of a justice make and subscribe the following declaration; that is to say,

"I A. B. do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the Act [*naming the special Act*].

A. B.

"Made and subscribed in the presence of ."

And such declaration shall be annexed to the award when made; and if any arbitrator or umpire having made such declaration shall wilfully act contrary thereto he shall be guilty of a misdemeanor.

This declaration may be made before a justice of the peace for any county (*Davies* v. *South Staffordshire Rail. Co.* (1851), 21 L. J. Q. B. 97). As to the time when the declaration should be made, it is sufficient if made before the arbitrators or umpire enter upon their respective duties; see *Bradshaw's Arbitration*, cited *supra*. Where a submission contained other matters than the question of compensation, and was, therefore, *extra* the Lands Clauses Act, 1845, and it did not distinctly appear that the party applying was ignorant that the declaration required to be made by the arbitrator had not been made, the court refused to set aside an award on that ground (*Levick* v. *Epsom, etc. Rail. Co.* (1859), 1 L. T. (N.S.) 60). Where an umpire, having omitted to make a declaration, informed the parties of the fact, and they signed a consent to dispense with the same, an attempt afterwards to set aside the award on the ground of such omission failed (*Palmer* v. *Metropolitan Rail. Co.* (1862), 31 L. J. Q. 259). But where one of the parties on becoming aware of the omission by the umpire to make the statutory declaration and annex it to his award, at once took steps to set it aside, it was held that the award must be set aside (*Ludlow Corporation* v. *Prosser* (1906), 70 J. P. 400).

The above section does not occur in the Lands Clauses Consolidation (Scotland) Act, 1845.

Costs of arbitration, how to be borne.

34. All the costs of any such arbitration, and incident thereto, to be settled by the arbitrators, shall be borne by the promoters of the undertaking, unless the arbitrators shall award the same or a less sum than shall have been offered by the promoters of the undertaking, in which case each party shall bear his own costs incident to the arbitration, and

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An offer may be withdrawn (*Foster* v. *Sheffield Corporation* (1895), 72 L. T. 549).

Where the landowner had given no notice of the amount of his claim, and consequently no offer at all was made, he was nevertheless held to be entitled to his costs of the arbitration (*Martin* v. *Leicester Waterworks Co.* (1858), 3 H. & N. 463). Such costs become payable to the landowner within a reasonable time afterwards, and the execution of the conveyance by him of the lands taken is not a condition precedent to the payment of such costs (*Capell* v. *G. W. Rail. Co.* (1883), 11 Q. B. D. 345).

As to the taxation of such costs by a master, see the Lands Clauses (Taxation of Costs) Act, 1895 (58 Vict. c. 11), s. 1, *post*, p. 1259, and the notes thereto.

"Arbitrator" in this section means either the arbitrators or umpire according as the award shall have been made by the former or the latter. The adjudication of the costs need not be within three months after the time of the reference, and need not be included in the award; but may be dealt with at a subsequent time (*Gould* v. *Staffordshire Potteries Waterworks Co.* (1850), 5 Ex. 214, overruling *L. & N. W. Rail. Co.* v. *Quick* (1849), 5 D. & L. 685).

Where an umpire awarded in respect of part of the landowner's claim for compensation a larger sum than the company offered in respect of that part, and at the same time awarded, as to another distinct part of the claim, in respect of which the company offered nothing that the landowner had suffered no damage, the landowner was held to be entitled, under s. 34, to those costs only of the arbitration which were incident to that part of his claim in respect of which compensation had been awarded (*R.* v. *Biram* (1852), 17 Q. B. 969).

A company gave a claimant notice of intention to summon a jury, and offered £15,237; the claimant then gave notice of his desire for arbitration; the company two months after, and before the claimant had appointed an arbitrator, appointed their arbitrator and made a further offer of £17,000; the claimant afterwards appointed an arbitrator and the arbitrators appointed an umpire, who awarded a sum between the two offers of the company:—*Held*, that the later offer, being before the beginning of the arbitration, was good, and therefore the sum awarded being less than the offer, the claimant must pay his own costs (*Fitzhardinge* v. *Gloucester and Berkeley Canal Co.* (1872), L. R. 7 Q. B. 776). But it will be otherwise if the offer is not made by the company until after the arbitration has begun (*Gray* v. *N. E. Rail. Co.* (1876), 1 Q. B. D. 696). If the offer is made in the notice of intention to summon a jury given under s. 38, and the claimant afterwards requires arbitration by virtue of s. 23 the offer still holds good, and if a less sum is awarded the claimant cannot recover his costs (*Lascelles* v. *Swansea School Board* (1899), 69 L. J. Q. B. 24). See also note to s. 1 of the Lands Clauses Act, 1869, *post*, p. 1257.

Where the amount claimed for compensation under the Lands Clauses Consolidation Act, 1845, is not paid or agreed to be paid, within twenty-one days, as provided by s. 68, it is the duty of the claimant, before nominating an arbitrator on his behalf, to attempt to procure the appointment of a single arbitrator. A claimant having immediately on the expiration of twenty-one days from the service of his notice of claim, nominated an arbitrator on his behalf, the promoters subsequently, and before nominating their arbitrators, and before the claimant delivered his nomination to his arbitrator, tendered a sum for damages and costs, which was refused, and the umpire afterwards awarded a less sum for compensation;—*Held*, that the claimant was not entitled to the costs of the arbitration (*Yates* v. *Blackburn Corporation* (1860), 6 H. & N. 61).

Where a party claiming compensation agrees to refer his claim to arbitration instead of taking the verdict of a jury under the provisions of the Act, and the deed of reference and the award are silent about costs, the party is not entitled, on account of an award in his favour, to receive costs according to the provisions of the Act, as if the jury had given a verdict in his favour (*Ex parte Reynal* (1847), 16 L. J. Q. B. 304). See also *Catling* v. *G. N. Rail. Co.* (1869), W. R. 121.

The costs of an arbitration to settle the compensation for land taken compulsorily for any of the purposes of the Public Health Act, 1875, are governed by this Act and not by the Public Health Act (*Ex parte Rayner* (1878), 3 Q. B. D. 446). *Cf. Brierley Hill L. B.* v. *Pearsall* (1884), 9 App. Cas. 595.

Where a private Act, incorporating the Lands Clauses Acts, directed claims for compensation to be settled by an arbitrator appointed by the Board of Trade, and was silent as to costs, the House of Lords held that the provisions of the Lands Clauses Acts as to costs applied (*Metropolitan District Rail. Co.* v. *Sharpe* (1880), 5 App. Cas. 425).

When the price is settled by arbitration the vendor is not entitled to a lien on the land for his costs (*Earl Ferrers* v. *Stafford and Uttoxeter Rail. Co.* (1872), L. R. 13 Eq. 524).

Where after compensation had been assessed the undertakers paid the money into court and also paid the taxed costs of the claimant and it afterwards turned out that the claimant had not the interest claimed, it was held that the costs could not be recovered back (*London C. C.* v. *Campbell* (1890), 6 T. L. R. 420).

Where in an arbitration under this Act under which the claim for compensation had been referred to two arbitrators with an umpire, and after the arbitration had commenced the umpire died before making any award, and thereupon the landowner and the company agreed to submit the compensation to a sole arbitrator, and he made an award exceeding the amount offered, such appointment of sole arbitrator was held to be a continuation of the statutory arbitration, and the claimant was, therefore, entitled to the costs of the former proceedings (*R.* v. *Manley-Smith* (1893), 63 L. J. Q. B. 171).

Where a landowner took up the award and sought to recover the amount paid to the arbitrator from a railway company :—*Held* not recoverable because the payment was voluntary. *Held*, also, that the decision of the taxing master who had disallowed the sum so paid by the landowner as costs in the arbitration was conclusive and not subject to review by the court (*Earl of Shrewsbury* v. *Wirrall Railways Committee*, [1895] 2 Ch. 812).

Under the corresponding section (32) of the Scotch Act, it has been decided by the Court of Session that "expenses of the arbiters or oversman" include the reasonable remuneration of the arbiters and oversman (*Murray* v. *North British Rail. Co.* (1900), Ct. of Sess. Cas., 2 Fraser, 460).

A railway company seeking to acquire land under the provisions of this Act, an arbitration took place to determine the amount of compensation to be paid by them to the owner of the land. The company had previously made an offer of the sum of £11,000. Part of the landowner's claim was in respect of damage that would be caused to the residue of his land, which was building land, by cutting it off from the natural outfall for its drainage. When the parties came before the arbitrator, it was agreed between them that a right should be reserved to the landowner of making a sewer for the purpose of draining his land under the railway and land of the company; and consequently no claim in respect of such damage as before mentioned was ultimately submitted to the arbitrator. The arbitrator awarded the sum of £10,029 to the landowner :—*Held*, that, although the sum awarded was less than the amount of the company's offer, the company were liable under s. 34 to pay the costs of the arbitration to the landowner on the ground that the award was not in respect of the same subject-matter as that in respect of

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which the offer was made (*Miles* v. *G. W. Rail. Co.*, [1896] 2 Q. B. 432). See also *Fisher* v. *G. W. Rail. Co.*, [1911] 1 K. B. 551.

After a notice to treat, a railway company entered on possession under an agreement in writing whereby they undertook to pay interest at 5 per cent. from that date on the amount of the compensation as ultimately to be ascertained or agreed on. Afterwards the railway company tendered £1,300 "in full of all his claims of every description in respect of his right and interest" in the land taken. This offer was not accepted. The umpire awarded £1,265, with interest at 5 per cent. from the date of the agreement above referred to;—*Held*, that the offer of £1,300 included interest, and that, therefore, as the sum awarded with interest amounted to more than the sum tendered, the landowner was entitled to the expenses of the arbitration (*Riddell* v. *Lanarkshire and Ayrshire Rail. Co.* (1904), 41 S. L. R. 319).

An arbitrator under the Lands Clauses Consolidation Act, 1845, having made alternative awards for £1,600 and £800, depending on the question whether a particular interest was to be taken into account and having stated a case, the court sustained the latter figure. It was held that the promoters were entitled to expenses in the action (*Lynch* v. *Glasgow Corporation* (1903), 40 S. L. R. 860).

The Arbitration Act, 1889, applies to an arbitration under the Light Railways Act, 1896, and the Lands Clauses Act, 1845, does not apply to such arbitration even though it be incorporated in the Order authorising the construction of the Light Railway (*Baxter* v. *Midland Rail. Co.* (1905), 21 T. L. R. 708).

See, further, the notes to s. 51, *post*, p. 1189.

Arbitrator's fees.

In making his award an umpire ought to specify separately the sum which he himself charges for his services, the sums similarly charged by the arbitrators, and the costs of the actual award (*In re Gilbert and Wright* (1904), 68 J. P. 143). Upon taxation of the costs of an arbitration as between the parties to the reference, the taxing master disallowed £119 of the sum paid to the arbitrators and umpire for their fees on the taking up of the award. In an action brought to recover from the arbitrators and umpire the amount so disallowed, it was held that in order to succeed, the plaintiffs must show that the fees charged were unreasonable and extortionate; and, further, that the certificate of the taxing master was not evidence that the amounts disallowed by him were unreasonably charged (*Llandrindod Wells Water Co.* v. *Hawksley* (1904), 68 J. P. 242).

As to taxation of costs of solicitor preparing award, see *In re Collyer-Bristow & Co.*, [1901] 2 K. B. 839.

Where land is taken compulsorily under the Military Lands Act, 1892, and the owner is entitled to the cost "of and incidental to" the arbitration and award, such costs do not include any costs incurred by him in connection with the public local inquiry held previously under s. 2 of the Act (*R.* v. *Goff* (1905), 2 Ir. R. 121).

Award to be delivered to the promoters of the undertaking.

35. The arbitrators shall deliver their award in writing to the promoters of the undertaking, and the said promoters shall retain the same, and shall forthwith, on demand, at their own expense, furnish a copy thereof to the other party to the arbitration, and shall at all times, on demand, produce the said award, and allow the same to be inspected or examined by such party or any person appointed by him for that purpose.

If a difference between a landowner and the promoters of an undertaking has been referred to arbitration and an award made, the court will, under the above section, compel the promoters by *mandamus*, at the landowner's instance, to take up the award. And the promoters must, for that purpose,

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pay the fees due on the award; the arbitrators or umpire having a lien on the award for such fees, which the promoters are bound to satisfy, except so far as the obligation may be limited by s. 34 (*R.* v. *South Devon Rail. Co.* (1850), 15 Q. B. 1043). The award cannot be impeached on the ground of its being contrary to the evidence (*Bradshaw's Arbitration* (1848), 12 Q. B. 562). As to what the award is evidence of in an action upon it, see *Rhodes* v. *Airedale Drainage Commissioners* (1876), 1 C. P. D. 402.

A railway company, having (though under protest) appointed an arbitrator and joined in the arbitration in respect of a claim for the purchase of minerals, must take up the award and furnish a copy to the claimants in accordance with s. 35; and a *mandamus* may be granted to compel them to do so. The validity of the award may be contested later (*L. & N. W. Rail. Co.* v. *Walker*, [1900] A. C. 109). See further *L. & N. W. Rail. Co.* v. *Walker*, [1903] A. C. 289.

The provisions of the Lands Clauses Act relating to the assessment of compensation apply to the assessment of compensation under s. 78 of the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20). The owners of certain mines, which lay under a railway, having given notice of their intention to work them, the railway company required a certain amount of support to be left. Arbitrators were appointed to settle the amount of compensation to be paid by the railway company in respect of the minerals required to be left unworked, and in respect of the continuous working of the mines being interrupted, and in respect of their being worked under restrictions so as not to affect the railway:—*Held*, that the claim of the mine-owners was made under s. 78 of the Railways Clauses Act, and therefore that the provisions of the Lands Clauses Act as to the assessment of compensation applied; and that it was therefore the duty of the railway company to take up the award, and a *mandamus* was accordingly granted (*R.* v. *L. & N. W. Rail. Co.*, [1894] 2 Q. B. 512).

Submission may be made a rule of court.

36. The submission to any such arbitration may be made a rule of any of the superior courts, on the application of either of the parties.

Where the submission has been made a rule of court under s. 36, the court has jurisdiction to set aside the award of the umpire, though neither the appointment of the umpire nor his award be made a rule of court (*Bradshaw's Arbitration* (1848), 12 Q. B. 562).

As to resort to the Chancery Division under the above section, see *Re Elliot* (1848), 2 De G. & Sm. 17; *Re Hawley and North Staffs. Rail. Co.* (1848), 2 De G. & S. 33; *Ex parte Harper* (1874), L. R. 18 Eq. 539; and *In re Harper and G. E. Rail. Co.* (1875), L. R. 20 Eq. 39.

Under the Arbitration Act, 1889 (52 & 53 Vict. c. 49), a submission, unless a contrary intention is expressed therein, shall have "the same effect in all respects as if it had been made a rule of court" (s. 1); and "an award on a submission may, by leave of the court or a judge, be enforced in the same manner as a judgment or order to the same effect" (s. 12).

Award not void through error in form.

37. No award made with respect to any question referred to arbitration under the provisions of this or the special Act shall be set aside for irregularity or error in matter of form.

It is no objection that the price of the land and the compensation for damage by severance, though each is expressly claimed, are assessed in a gross sum. And the claimant in respect of land, of which he is tenant in fee, cannot object that the award assesses the compensation on the assumption that he is in possession, whereas the land is occupied by a lessee (*Bradshaw's Arbitration* (1848), 12 Q. B. 562).

The proceedings under s. 85 are not necessarily invalid because the award was signed on a day subsequent to the day on which the money was paid into court and the bond given (*Stamps* v. *Birmingham, etc. Rail. Co.* (1848), 7 Hare, 251).

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On a motion to set aside an award, the arbitrator's evidence is admissible to impeach the award on the ground of fraud or of mistake, either as to the subject-matter of the reference, or as to some legal principle which goes directly to the basis on which the award is founded (*In re Dare Valley Rail. Co.* (1868), L. R. 6 Eq. 429; *S. C. sub nom. In re Rhys and Richards and the Dare Valley Rail. Co.*, 37 L. J. Ch. 719). *Cf. Duke of Buccleuch* v. *Metropolitan B. of W.* (1871), L. R. 5 H. L. 418). If a lump sum be awarded and it appears on the face of the award or be proved by extrinsic evidence, that in arriving at the lump sum matters were taken into account, which the arbitrators had no jurisdiction to consider the award is bad. It is not enough to make it bad, that the arbitrators have not said in arriving at the lump sum that they had not included claims wrongly made by the claimants, or because the arbitrators had taken evidence on matters not referred, but not shown to have been irrelevant to the inquiry or to have been included in the award of a lump sum (*Falkingham* v. *Victorian Railway Commissioners* (1900), A. C. 452). When the court refers a matter back to an umpire who has made an award, for reconsideration, that award is avoided altogether (*Dare Valley Rail. Co.* v. *Rhys* (1869), 38 L. J. Ch. 417). Such a reference back of an award of the value of land operates as an original reference to the umpire, so that by virtue of s. 23 if no proceedings are taken on it for three months, the price is to be determined by a jury (*ibid.*). And see *In re Stringer and Riley's Arbitration* (1901), 1 K. B. 105).

By a submission to arbitration of a question of disputed compensation, the arbitrator was to determine what sum should be paid for the purchase of certain land, and what "other, if any," sum for severance damage. The arbitrator by his award, after reciting the submission and that he had considered the matters so referred to him, awarded a sum to be paid for the purchase of the land, without saying anything as to any severance damage:—*Held*, on motion to set it aside, that the award was final and good; that the arbitrator by his silence, negatived any right to compensation in respect of severance damage (*In re Duke of Beaufort and Swansea Harbour Trustees* (1860), 8 C. B. (N.S.) 146).

The Arbitration Act, 1889 (52 & 53 Vict. c. 49), gives power to arbitrators to state a special case, even pending the arbitration (ss. 7 and 19), and to the court or a judge the power to enlarge the time for making an award, even where the time has expired (s. 9).

Promoters of the undertaking to give notice before summoning a jury.

38. Before the promoters of the undertaking shall issue their warrant for summoning a jury for settling any case of disputed compensation, they shall give not less than ten days notice to the other party of their intention to cause such jury to be summoned; and in such notice the promoters of the undertaking shall state what sum of money they are willing to give for the interest in such lands sought to be purchased by them from such party, and for the damage to be sustained by him by the execution of the works.

See *Railstone* v. *York, Newcastle and Berwick Rail. Co.* (1850), 15 Q. B. 404; *Richardson* v. *S. E. Rail. Co.* (1851), 11 C. B. 154; *Hayward* v. *Metropolitan Rail. Co.* (1864), 4 B. & S. 787; *Church* v. *London School Board* (1892), 8 T. L. R. 310.

An offer made under this section is not withdrawn by a notice of a desire for arbitration under s. 23, and enures for the benefit of the promoters (*Lascelles* v. *Swansea School Board* (1899), 69 L. J. Q. B. 24).

Warrant for summoning jury to be addressed to the sheriff.

39. In every case in which any such question of disputed compensation shall be required to be determined by the verdict of a jury the promoters of the undertaking shall issue their warrant to the sheriff, requiring him to summon a jury for that purpose, and such warrant shall be under the common seal of the promoters of the undertaking if they be a corporation, or if they be not a corporation under the hands

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and seals of such promoters or any two of them; and if such sheriff be interested in the matter in dispute such application shall be made to some coroner of the county in which the lands in question, or some part thereof shall be situate; and if all the coroners of such county be so interested such application may be made to some person having filled the office of sheriff or coroner in such county, and who shall be then living there, and who shall not be interested in the matter in dispute; and with respect to the persons last mentioned preference shall be given to one who shall have most recently served either of the said offices; and every ex-sheriff, coroner, or ex-coroner shall have power, if he think fit to appoint a deputy or assessor.

If the company refuse to issue their warrant, they will be compelled to do so by *mandamus* (*Ex parte Senior* (1849), 7 D. & L. 36; *Morgan* v. *Metropolitan Rail. Co.* (1868), L. R. 4 C. P. 97; and see *R.* v. *East Lancashire Rail. Co.* (1847), 16 L. J. Q. B. 127). As to action for *mandamus*, see Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25 (8), and *Fotherby* v. *Metropolitan Rail. Co.* (1866), L. R. 2 C. P. 188. To an action for *mandamus*, a plea that at the time notice to treat was given the capital had not been subscribed is no defence (*Guest* v. *Poole and Bournemouth Rail. Co.* (1870), L. R. 5 C. P. 553).

Under the above section the company may properly issue their warrant to summon a compensation jury to the sheriff of the county where the lands are situated, although the under-sheriff be interested as a shareholder in the company; and in such a case the sheriff should either take the inquisition in person or appoint some disinterested deputy (*Worsley* v. *South Devon Rail. Co.* (1851), 16 Q. B. 539).

The direction in respect of the interest of the sheriff is introduced for the protection of the party against whom the interest would operate, and he may therefore waive the protection if he so elects (*Ex parte Baddeley* (1848), 5 D. & L. 575).

The interest mentioned by the statute must be taken to mean such an interest as would disqualify a justice of the peace at common law (*R.* v. *M. S. & L. Rail. Co.* (1867), L. R. 2 Q. B. 336). See further as to disqualification through interest *Corrigal* v. *London and Blackwall Rail. Co.* (1843), 5 M. & G. 219; *R.* v. *Rand* (1866), L. R. 1 Q. B. 230; and the notes, *ante*, p. 160, as to the disqualification of justices on that ground.

Where there are two sheriffs and one of them is interested, the warrant ought to go to the other (*Letsom* v. *Bickley* (1816), 5 M. & S. 144).

Although by s. 145 "no proceeding, etc., shall be quashed for want of form, nor shall the same be removed by *certiorari*," a *certiorari* will issue to bring up an inquisition if the sheriff be interested (*R.* v. *L. & N. W. Rail. Co.* (1864), 9 L. T. (N.S.) 423).

Where the landowner having been served with notice to treat had demanded that the amount of compensation should be settled by a jury, and no further steps were taken to complete the purchase until after the expiration of the period prescribed for the exercise of the compulsory powers, it was held that the company might, on the application of the landowner, notwithstanding the lapse of time, be compelled by *mandamus* to issue their warrant to the sheriff to summon a jury to assess the amount of compensation (*Birmingham and Oxford Junction Rail. Co.* v. *R.* (in error) (1850), 15 Q. B. 634; see further *R.* v. *York, Newcastle and Berwick Rail. Co.* (1851), 20 L. J. Q. B. 503).

The precept must be consistent with the notice to treat (*Stone* v. *Commercial Rail. Co.* (1839), 4 My. & Cr. 122; and see *Ex parte Bailey* (1852), 1 Bail. C. C. 66).

As to the signing of the inquisition by the coroner or other deputy of the sheriff, see *R.* v. *Perkin* (1845), 7 Q. B. 165; *Stroud* v. *Watts* (1846) 3 D. & L. 799.

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Provisions applicable to sheriff to apply to coroner.

40. Throughout the enactments contained in this Act relating to the reference to a jury, where the term "sheriff" is used, the provisions applicable thereto shall be held to apply to every coroner or other person lawfully acting in his place; and in every case in which any such warrant shall have been directed to any other person than the sheriff such sheriff shall, immediately on receiving notice of the delivery of the warrant, deliver over, on application for that purpose, to the person to whom the same shall have been directed, or to any person appointed by him to receive the same, the jurors book and special jurors list belonging to the county where the lands in question shall be situate.

Jury to be summoned.

41. Upon the receipt of such warrant the sheriff shall summon a jury of twenty-four indifferent persons, duly qualified to act as common jurymen in the superior courts, to meet at a convenient time and place to be appointed by him for that purpose, such time not being less than fourteen nor more than twenty-one days after the receipt of such warrant, and such place not being more than eight miles distant from the lands in question, unless by consent of the parties interested, and he shall forthwith give notice to the promoters of the works of the time and place so appointed by him.

The remedy where some of the jury are not qualified to act is by challenge, and not by motion to set the verdict aside (*In re Chelsea Waterworks Co.* (1855), 10 Ex. 731; see also *Trustees of Emmanuel Hospital, Westminster* v. *Metropolitan District Rail. Co.* (1869), 19 L. T. (N.S.) 692; and *Horrocks* v. *Metropolitan Rail. Co.* (1865), 19 C. B. (N.S.) 139).

Jury to be impannelled.

42. Out of the jurors appearing upon such summons a jury of twelve persons shall be drawn by the sheriff, in such manner as juries for trials of issues joined in the superior courts are by law required to be drawn; and if a sufficient number of jurymen do not appear in obedience to such summons the sheriff shall return other indifferent men, duly qualified as aforesaid, of the bystanders, or others that can speedily be procured, to make up the jury to the number aforesaid; and all parties concerned may have their lawful challenges against any of the jurymen, but no such party shall challenge the array.

Sheriff to preside, witnesses to be summoned.

43. The sheriff shall preside on the said inquiry, and the party claiming compensation shall be deemed the plaintiff, and shall have all such rights and privileges as the plaintiff is entitled to in the trial of actions at law; and if either party so request in writing, the sheriff shall summon before him any person considered necessary to be examined as a witness touching the matters in question; and on the like request the sheriff shall order the jury, or any six or more of them, to view the place or matter in controversy, in like manner as views may be had in the trial of actions in the superior courts.

As to the meaning of the words "all the rights and privileges as the plaintiff," see *R.* v. *Gardner* (1837), 6 A. & E. 112; and *R.* v. *Sheriff of Warwickshire* (1841), 2 Rail. Cas. 661.

Penalty on sheriff and

44. If the sheriff make default in any of the matters hereinbefore required to be done by him in relation to any such trial or inquiry, he shall forfeit fifty pounds for every such offence, and such penalty shall be recoverable by the promoters of the undertaking by action in any of the superior courts; and if any person summoned and returned upon any jury under this or the special Act, whether common or special, do not appear, or if appearing he refuse to make oath, or in any other manner unlawfully neglect his duty, he shall, unless he show reasonable excuse to the satisfaction of the sheriff, forfeit a sum not exceeding ten pounds, and every such penalty payable by a sheriff or juryman shall be applied in satisfaction of the costs of the inquiry, so far as the same will extend; and in addition to the penalty hereby imposed every such juryman shall be subject to the same regulations, pains, and penalties as if such jury had been returned for the trial of an issue joined in any of the superior courts.

jury for default.

Penalty on witnesses making default.

45. If any person duly summoned to give evidence upon any such inquiry, and to whom a tender of his reasonable expenses shall have been made, fail to appear at the time and place specified in the summons, without sufficient cause, or if any person, whether summoned or not, who shall appear as a witness refuse to be examined on oath touching the subject-matter in question, every person so offending shall forfeit to the party aggrieved a sum not exceeding ten pounds.

Notice of inquiry.

46. Not less than ten days' notice of the time and place of the inquiry shall be given in writing by the promoters of the undertaking to the other party.

The right to this statutory notice may be waived by acquiescence in a shorter notice (*Long* v. *Glasgow Court House Commissioners* (1871), Ct. of Sess. Cas., 9 Macph. 768).

If the party make default the inquiry not to proceed.

47. If the party claiming compensation shall not appear at the time appointed for the inquiry such inquiry shall not be further proceeded in, but the compensation to be paid shall be such as shall be ascertained by a surveyor appointed by two justices in manner hereinafter provided.

Jury to be sworn.

48. Before the jury proceed to inquire of and assess the compensation or damage in respect of which their verdict is to be given they shall make oath that they will truly and faithfully inquire of and assess such compensation or damage; and the sheriff shall administer such oaths as well as the oaths of all persons called upon to give evidence.

Sums to be paid for purchase of lands and for damage to be assessed separately.

49. Where such inquiry shall relate to the value of lands to be purchased, and also to compensation claimed for injury done or to be done to the lands held therewith, the jury shall deliver their verdict separately for the sum of money to be paid for the purchase of the lands required for the works, or of any interest therein belonging to the party with whom the question of disputed compensation shall have arisen, or which under the provisions herein contained he is enabled to sell or convey, and for the sum of money to be paid by way of compensation for the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such lands by

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Separate assessment.

The provisions of this section as to separate assessment have been held to be directory merely and not compulsory; and therefore either party intending to insist on it must call upon the jury at the time to make a separate assessment of the value and of the damages. See *per* TINDAL, C.J., in *Corrigal* v. *London and Blackwall Rail. Co.* (1843), 5 M. & G. 219; and the earlier case of *In re London and Greenwich Rail. Co.* (1835), 2 A. & E. 678; and also *Bradshaw's Arbitration* (1848), 12 Q. B. 562. But where various parties were interested, and the jury were sworn to assess the sums to be paid to the parties for their respective estates, but found only the gross value of the premises without apportioning it, the inquisition was held bad (*R.* v. *Trustees of the Norwich and Watton Road* (1836), 5 A. & E. 563).

Where a claimant for compensation under the Lands Clauses Consolidation Act gives particulars of his claim, showing the assessment claimed in respect of each item of damage complained of, he is not bound by such particulars, and a jury may in a proper case, award him more than he has claimed in respect of any particular item (*Robertson* v. *City and South London Rail. Co.* (1904), 68 J. P. 280).

Where the jury are of opinion that the claimant had not sustained any damage, they may find accordingly (*R.* v. *Lancaster and Preston Junction Rail. Co.* (1845), 6 Q. B. 759).

Where the jury partially exceed their jurisdiction, a *certiorari* may issue at the instance of the company to remove the whole proceedings (*R.* v. *South Wales Rail. Co.* (1849), 13 Q. B. 988).

Where a jury had assessed compensation to a claimant without noticing the interest of any other person, the Court of Queen's Bench held that it was not to be presumed, in the absence of any affidavit, that the jury had given such compensation for a larger interest than the individual claiming really had, or had overlooked any other person's interest (*R.* v. *Nottingham Old Waterworks Co.* (1837), 6 A. & E. 355).

Question of title.

It is no part of the duty of the jury to decide on a question of title, as where the landowner claims a right of way, the existence of which is denied by the company (*R.* v. *L. & N. W. Rail. Co.* (1854), 3 E. & B. 443).

Injuriously affecting.

Nor is it any part of the duty of the jury to decide whether lands have been injuriously affected; their jurisdiction being limited to assessing the amount of compensation. Therefore where a man claimed damages in respect of his premises having been injuriously affected from the execution of the works of a railway company by the removal of the adjacent soil; and, in answer to questions put to them, the jury found that if there had been no building the ground would not have sunk, upon which the presiding officer directed them, as a matter of law (the building being a new one), that the claimant had not sustained any legal damage; and the jury accordingly found, under his direction, that the claimant's property had not been injuriously affected; the court quashed the inquisition (*Horrocks* v. *Metropolitan Rail. Co.* (1863), 4 B. & S. 315; *S. C. sub nom. R.* v. *Metropolitan Rail. Co.* (1863), 32 L. J. Q. B. 367; and *R.* v. *L. & N. W. Rail. Co.* (1854), 3 E. & B. 443). So it has been held that it is not for the jury to decide what the claimant's interest is, but only what is the value of the interest he claims (*Ex parte Cooper* (1864), 2 Drew. & Sm. 312; *Brandon* v. *Brandon* (1864), 2 Drew. & Sm. 305). See also *Barber* v. *Nottingham and Grantham Rail. Co.* (1864), 15 C. B. (N.S.) 726. Accordingly the assessment of damages by the verdict of a jury under the Lands Clauses Act in respect of lands injuriously affected by public works, is not conclusive that the lands were damaged and injuriously affected; and therefore, in an action upon such verdict and the judgment thereon to recover the damages awarded and costs, the defendants are not estopped from setting up as a defence that the lands and the plaintiff's interest therein were not damaged and injuriously affected (*Read* v. *Victoria Station and Pimlico Rail. Co.* (1863), 1 H. & C. 826; *Beckett* v. *Midland Rail. Co.* (1867), L. R. 3 C. P. 82). And see also *Chapman* v.

Monmouthshire Railway and Canal Co. (1857), 2 H. & N. 267. Sect. 68 does not give the arbitrator or a jury jurisdiction to determine whether the promoters are excused from the obligation to pay by any collateral matter, such as whether an agreement between the promoters and the claimant, whereby the promoters undertook to build a good and substantial wall, has been broken, or whether the breach of such agreement was the cause of the land being injuriously affected (*In re Byles and the Ipswich Dock Commissioners* (1855), 11 Ex. 464).

On a *mandamus* against a company commanding the defendants at their own expense to take up an award and furnish a copy to the prosecutor, it was returned that the ferry, and the interest of the prosecutor in it, had not been injuriously affected by the company's works, within the meaning of the Lands Clauses Act:—*Held*, on demurrer, that the return was good, as it showed that the award would be a mere nullity, and that the company were therefore not bound to incur useless expense in taking it up (*R.* v. *Cambrian Rail. Co.* (1869), L. R. 4 Q. B. 320).

The party causing a defect in the procedure cannot himself set it up with a view to questioning the proceedings (*R.* v. *Committeemen for the South Holland Drainage* (1838), 8 A. & E. 429).

Building land.

Where part of land laid out as a building estate was taken and the claimant claimed compensation for injuriously affecting other lands which were separated from the land taken by intervening land, the claimant was held not entitled to such compensation (*R.* v. *Essex* (1886), 17 Q. B. D. 447). This decision was, however, reversed by the House of Lords in *Cowper-Essex* v. *Acton L. B.* (1889), 14 App. Cas. 153. In this case, the respondents, under statutory powers incorporating the Lands Clauses Acts, gave the appellant notice to treat for the purchase of part of his land which they required for sewage works. In an inquisition held under that Act, evidence was given that the existence of sewage works, even if conducted so as not to create an actionable nuisance, depreciated the market value of the appellant's other lands for building purposes. The land taken was let on long building leases; of the other lands part was in hand, and part was let for short periods for brick-making. The land taken was separated from the other lands, in part by other property of the appellant's, and in part by a railway. The jury gave a verdict for the value of the land taken and a further sum for all damage sustained or to be sustained by reason of the injuriously affecting the other lands by the exercise of the respondents' statutory powers:—*Held*, that the jury had not exceeded their jurisdiction in awarding the further sum. For, first, part of the appellant's land having been taken for the sewage works, compensation might be awarded for damage to be sustained by reason of the injuriously affecting his other lands, not only by the construction of the sewage works, but by their use. Secondly, the damage was not too remote to form the subject of compensation, even though no nuisance might be caused. Thirdly, the lands taken and the lands injuriously affected being held by the same owner, so that the unity of ownership conduced to the advantage of the property as one holding, the lands injuriously affected were "held with" the lands taken within the meaning of s. 49 of the Lands Clauses Consolidation Act, 1845. The decision of the Court of Appeal in *R.* v. *Essex*, *supra*, was reversed, and *In re Stockport, Timperly, etc. Rail. Co.* (1864), 33 L. J. Q. B. 251, was approved. By Lord Watson: Where several pieces of land owned by the same person are, though not adjoining, so near to each other and so situated that the possession and control of each gives an enhanced value to all of them, they are lands held together within the meaning of the Lands Clauses Consolidation Act, 1845, ss. 49, 63; so that if one piece is compulsorily taken and converted to uses which depreciate the value of the rest, the owner has a right to compensation for the depreciation (*Cowper-Essex* v. *Acton L. B.* (1889), 14 App. Cas. 153). See *In re L. T. & S. Rail. Co.*, and *Trustees of Gower's Walk Schools* (1889), 24 Q. B. D. 326.

A railway company took land on which cotton mills would probably have been built. The owner had other land, on which he had built a reservoir,

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from which water might be supplied to such cotton mills when built. In proceeding to ascertain the compensation, the umpire received evidence as to the profit which might have been derived from supplying water to the mills when built, and awarded compensation for the loss of those prospective profits:—*Held*, by the lords justices, that the umpire was right in receiving the evidence and in awarding such compensation (*Ripley* v. *G. N. Rail. Co.* (1875), L. R. 10 Ch. 435).

The claimants bought some land with the intention of building a school upon it, for which purpose it was specially adaptable. Before they had begun to build they received notice from a railway company to treat for the purchase of part of the land. In consequence of the construction of the railway the part of the land not taken by the company would be rendered less suitable for the purpose of a school; and there was no other site in the neighbourhood equally suitable for the purpose:—*Held*, that in assessing the compensation payable to the claimants, their intention to use the site for a school ought to be taken into consideration, although they had done nothing towards carrying that intention into execution (*Bailey* v. *Isle of Thanet Light Rail. Co.*, [1900] 1 Q. B. 722).

As to when the special adaptability of land for a particular purpose may be taken into account, see *Re Riddell and Newcastle and Gateshead Water Co.* (1879), 90 L. T. 44 n.; *Re an Arbitration between Countess Ossalinsky and Corporation of Manchester* (1883); see Browne and Allan's Law of Compensation, 2nd ed. p. 659; *Tynemouth Corporation* v. *Duke of Northumberland* (1903), 67 J. P. 425; *In re Gough and Aspatria Water Board* (1904), 1 K. B. 417; *In re Lucas and Chesterfield Gas and Water Board*, [1909] 1 K. B. 16.

Ancient ferry.

A railway company, under the authority of their Act, constructed across a river, half a mile above an ancient ferry, a railway bridge and a foot bridge, the foot bridge being used by persons going to the railway station and also to other places. The traffic across the ferry fell off, and the ferry was given up. The owners of the ferry claimed compensation under the Lands and Railways Clauses Consolidation Acts:—*Held* (reversing the decision of the Queen's Bench Division), that no compensation could be recovered. First, on the ground that an action could not have been maintained for disturbance of the ferry in respect of the traffic either by the railway or by the foot bridge, if they had been erected without the authority of an Act; secondly, on the ground that, the injury to the ferry being occasioned, not by the construction, but by the working of the railway, the ferry had not been injuriously affected within the Lands Clauses Act or the Railways Clauses Act (*Hopkins* v. *G. N. Rail. Co.* (1877), 2 Q. B. D. 224, overruling *R.* v. *Cambrian Rail. Co.* (1871), L. R. 6 Q. B. 422).

Churchyard.

In the case of *Stebbing* v. *Metropolitan Board of Works* (1870), L. R. 6 Q. B. 37, a rector was held to be entitled to practically no compensation in respect of disused burial grounds which were taken for public improvements, because he could not have alienated them, and in his hands they were practically valueless. It has, however, since been doubted whether the land should have been considered valueless in the hands of the rector. See *Re City and South London Rail. Co. and St. Mary, Woolnoth, and St. Mary, Woolchurch Haw*, [1903] 2 K. B. 728, *per* VAUGHAN WILLIAMS, L.J., at p. 736; see also *Hilcoat* v. *Canterbury* (*Archbishop of*) (1850), 19 L. J. (C. P.) 376.

Verdict and judgment to be recorded.

50. The sheriff before whom such inquiry shall be held shall give judgment for the purchase money or compensation assessed by such jury; and the verdict and judgment shall be signed by the sheriff, and being so signed shall be kept by the clerk of the peace among the records of the general or quarter sessions of the county in which the lands or any part thereof shall be situate in respect of which such purchase money or compensation shall have been awarded; and such

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verdicts and judgments shall be deemed records, and the same or true copies thereof shall be good evidence in all courts and elsewhere; and all persons may inspect the said verdicts and judgments, and may have copies thereof or extracts therefrom, on paying for each inspection thereof one shilling, and for every one hundred words copied or extracted therefrom sixpence, which copies or extracts the clerk of the peace is hereby required to make out, and to sign and certify the same to be true copies.

It is not necessary to draw up the verdict and judgment with the formality required in setting out the judgment of an inferior court (*R.* v. *Trustees of Swansea Harbour* (1839), 8 A. & E. 439). The sheriff may be compelled by *mandamus* to execute the inquiry (*Walker* v. *London and Blackwall Rail. Co.* (1842), 3 Q. B. 744). *Semble*, there is no remedy for a misdirection by the sheriff or improper rejection of evidence on the ground that the verdict is against evidence, or that the compensation assessed is grossly insufficient (*R.* v. *Eastern Counties Rail. Co.* (1843), 2 Dowl. (N.S.) 945); and see *R.* v. *Halifax Corporation* (1866), 14 L. T. (N.S.) 447; but see *Mortimer* v. *South Wales Rail. Co.* (1859), 1 E. & E. 375; *Chabot* v. *Lord Morpeth* (1844), 15 Q. B. 446.

If the jury have any jurisdiction, and if any evidence is placed before them which warrants the finding of any damages, then in an action to recover the amount so found the plaintiff must recover, however excessive the amount of damages, however erroneous the law laid down to the jury, however wrong the principle they adopted (*Metropolitan Board of Works* v. *Howard* (1889), 5 T. L. R. 732).

If an action is brought to enforce the verdict of a jury for a lump sum, it is no answer to say that the jury have awarded compensation in respect of a matter not a subject of compensation, provided they have awarded also in respect of a matter in regard to which they had jurisdiction (*Long Eaton Recreation Grounds Co.* v. *Midland Rail. Co.*, [1902] 2 K. B. 574).

Costs of the inquiry, how to be borne.

51. On every such inquiry before a jury, where the verdict of the jury shall be given for a greater sum than the sum previously offered by the promoters of the undertaking, all the costs of such inquiry shall be borne by the promoters of the undertaking; but if the verdict of the jury be given for the same or a less sum than the sum previously offered by the promoters of the undertaking, or if the owner of the lands shall have failed to appear at the time and place appointed for the inquiry, having received due notice thereof, one-half of the costs of summoning, impannelling, and returning the jury, and of taking the inquiry and recording the verdict and judgment thereon, in case such verdict shall be taken, shall be defrayed by the owner of the lands, and the other half by the promoters of the undertaking, and each party shall bear his own costs, other than as aforesaid, incident to such inquiry.

As to taxation of costs, see the Lands Clauses (Taxation of Costs) Act, 1895, *post*.

As to what costs are included in the "costs of the inquiry," see *R.* v. *City of York JJ.* (1834), 1 A. & E. 828; *R.* v. *Sheriff of Warwickshire* (1841), 2 Rail. Cas. 661; *R.* v. *Gardner* (1837), 6 A. & E. 112. The words "such inquiry" in s. 52 refer to inquiries where the landowner recovers more than the sum offered (*Bray* v. *S. E. Rail. Co.* (1849), 7 D. & L. 307); and where the jury assess the same amount as had been offered previously, the company are not entitled, under ss. 51 and 52, to call upon the landower to

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defray any portion of their costs for counsel, attornies or witnesses as being costs of taking the inquiry (*ibid.*); and see *S. E. Rail. Co.* v. *Richardson* (1852), 15 C. B. 810.

The words "such inquiry" mean the whole inquiry which has resulted from the issuing of the promoters' warrant to the sheriff; where, therefore, there has been an abortive inquiry, and subsequently a valid one, the claimants are entitled to the costs of both inquiries and of the proceedings by *certiorari* by which they set the first aside (*R.* v. *North London Rail. Co.* (1882), 51 L. J. Q. B. 241).

The words "the sum previously offered" in this section mean an offer made under s. 38 (*Pearson* v. *G. N. Rail. Co.* (1869), L. R. 7 Q. B. 785 n.; *R.* v. *Manley-Smith* (1883), 12 Q. B. D. 481).

The company must make an offer ten days previously to trial (see s. 46), in order to save half the costs, in the event of the jury giving a less sum than they offered (*Metropolitan Rail. Co.* v. *Turnham* (1868), 14 C. B. (N.S.) 212; and see also *Hayward* v. *Metropolitan Rail. Co.* (1864), 4 B. & S. 787). The company are not bound by their first offer, provided they make an amended offer ten days before the inquiry (*ibid.*).

Though an owner whose land is taken compulsorily has refused to accept a sealed offer and a jury has consequently been summoned to assess the compensation, the owner may nevertheless accept such offer at any time before the jury return a verdict as to the price to be paid, even after they have decided a preliminary point, *e.g.*, that the premises are "insanitary" within the meaning of s. 20 of the London County Council Act, 1899. The jury should be directed to return a verdict for the agreed amount so as to make it clear how the costs are to be dealt with (*R.* v. *High Bailiff of Westminster, Ex parte L.C.C.*, [1903] 2 K. B. 189).

The company having offered for compensation a sum *to include the claimant's costs*, and the jury having given a verdict for less than that sum, it was held that the claimant was not deprived of his right to costs under s. 51, inasmuch as the offer was bad, because it included costs. Such an offer to be valid must be for that which is the subject of compensation merely, unclogged with conditions (*Balls* v. *Metropolitan B. of W.* (1866), L. R. 1 Q. B. 337). *Quære*, whether a sum offered to a claimant under s. 68, contemporaneously with the service of the notice of the time and place of inquiry, but after the claimant has incurred the expense of attending at the nomination of the special jury, is a sum "previously offered" within s. 51 (*ibid.*). See, further, *Fisher* v. *G. W. Rail. Co.*, [1911] 1 K. B. 551.

Sect. 51 does not render a company liable to the costs of an inquiry (under s. 94) as to whether land intersected by the works of the company is of less value than the expense of making a communication between it; as the sections of the Lands Clauses Act which award costs apply only to cases where the obligation of the company to take land is not in question (*Cobb* v. *Mid-Wales Rail. Co.* (1866), L. R. 1 Q. B. 342).

See also *S. E. Rail. Co.* v. *Richardson*, *post*, p. 1195.

See further the notes to s. 34, *ante*, pp. 1178 *et seq.*

Particulars of the costs.

52. The costs of any such inquiry shall, in case of difference, be settled by one of the masters of the Court of Queen's Bench of England or Ireland, according as the lands are situate, on the application of either party, and such costs shall include all reasonable costs, charges, and expenses incurred in summoning, impannelling, and returning the jury, taking the inquiry, the attendance of witnesses, the employment of counsel and attornies, recording the verdict and judgment thereon, and otherwise incident to such inquiry.

See 58 Vict. c. 11, s. 1, *post*, p. 1259.

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Note.

It has been held, that in taxing the costs under s. 1 of the 32 & 33 Vict. c. 18 (repealed and superseded by 58 Vict. c. 11), the masters act as original arbitrators and not as officers of the court, and consequently that there is no power in the court to review the taxation (*Owen* v. *L. & N. W. Rail. Co.* (1867), L. R. 3 Q. B. 54; followed in *In re Sandback Charity Trustees* (1877), 3 Q. B. D. 1; *Re Scully* (1848), 11 Ir. L. R. 292; *Tenant* v. *Borough of Belfast* (1847), 11 Ir. L. R. 290; and *Earl of Shrewsbury* v. *Wirral Railways Committee*, [1895] 2 Ch. 812; and see for illustration, *Re Sheffield Waterworks Act* (1865), L. R. 1 Ex. 54). The Chancery Taxing Masters have also power to tax (*Covington* v. *Metropolitan District Rail. Co.*, [1903] 1 K. B. 231). See the note to s. 1 of the Lands Clauses Taxation of Costs Act, 1895, p. 1259, *post*.

Payment of costs.

53. If any such costs shall be payable by the promoters of the undertaking, and if within seven days after demand such costs be not paid to the party entitled to receive the same, they shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly; and if any such costs shall be payable by the owner of the lands, or of any interest therein the same may be deducted and retained by the promoters of the undertaking, out of any money awarded by the jury to such owner, or determined by the valuation of a surveyor under the provision hereinafter contained; and the payment or deposit of the remainder, if any, of such money shall be deemed payment and satisfaction of the whole thereof, or if such costs shall exceed the amount of the money so awarded or determined, the excess shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly.

The remedy provided by the above section being distress, the court will not interfere by *mandamus*. See *R.* v. *London and Blackwall Rail. Co.* (1845), 3 D. & L. 399; *R.* v. *Hull and Selby Rail. Co.* (1844), 6 Q. B. 70.

Special jury to be summoned at the request of either party.

54. If either party desire any such question of disputed compensation as aforesaid to be tried before a special jury, such question shall be so tried, provided that notice of such desire, if coming from the other party, be given to the promoters of the undertaking before they have issued their warrant to the sheriff; and for that purpose the promoters of the undertaking shall by their warrant to the sheriff require him to nominate a special jury for such trial; and thereupon the sheriff shall, as soon as conveniently may be after the receipt by him of such warrant, summon both the parties to appear before him, by themselves or their attornies, at some convenient time and place appointed by him, for the purpose of nominating a special jury (not being less than five nor more than eight days from the service of such summons); and at the place and time so appointed the sheriff shall proceed to nominate and strike a special jury, in the manner in which such juries shall be required by the laws for the time being in force to be nominated or struck by the proper officers of the superior courts, and the sheriff shall appoint a day, not later than the eighth day after striking of such jury, for the parties or their agents to appear before him to reduce the number of such jury, and thereof shall give four days notice to the parties; and on the day so appointed the sheriff shall proceed to reduce the said

Sect. 54. special jury to the number of twenty, in the manner used and accustomed by the proper officers of the superior courts.

Where a landowner had given notice under s. 68, but, before the expiration of twenty-one days, gave a second notice of his desire for a special jury under s. 54, which does not fix any time within which the company are to issue their warrant, it was held, that the second notice did not operate as a waiver of the first; but that the company were bound to issue a warrant within twenty-one days after the receipt of the first notice; and in default thereof to pay the compensation claimed (*Glyn* v. *Aberdare Rail. Co.* (1859), 6 C. B. (N.S.) 359).

Deficiency of special jurymen.

55. The special jury on such inquiry shall consist of twelve of the said twenty who shall first appear on the names being called over, the parties having their lawful challenges against any of the said jurymen; and if a full jury do not appear, or if after such challenges a full jury do not remain, then, upon the application of either party, the sheriff shall add to the list of such jury the names of any other disinterested persons qualified to act as special or common jurymen, who shall not have been previously struck off the aforesaid list, and who may then be attending the court, or can speedily be procured, so as to complete such jury, all parties having their lawful challenges against such persons; and the sheriff shall proceed to the trial and adjudication of the matters in question by such jury; and such trial shall be attended in all respects with the like incidents and consequences, and the like penalties shall be applicable, as hereinbefore provided in the case of a trial by common jury.

See *In re Chelsea Waterworks Co.* (1855), 10 Ex. 731.

Other inquiries before same special jury by consent.

56. Any other inquiry than that for the trial of which such special jury may have been struck and reduced as aforesaid may be tried by such jury, provided the parties thereto respectively shall give their consent to such trial.

Jurymen not to attend more than once a year.

57. No juryman shall, without his consent, be summoned or required to attend any such proceeding as aforesaid more than once in any year.

Compensation to absent parties to be determined by a surveyor appointed by two justices.

58. The purchase money or compensation to be paid for any lands to be purchased or taken by the promoters of the undertaking from any party who, by reason of absence from the kingdom, is prevented from treating, or who cannot after diligent inquiry be found, or who shall not appear at the time appointed for the inquiry before the jury as hereinbefore provided for, after due notice thereof, and the compensation to be paid for any permanent injury to such lands, shall be such as shall be determined by the valuation of such able practical surveyor as two justices shall nominate for that purpose as hereinafter mentioned.

The instrument appointing the surveyor need not describe the lands to be valued (*Poynder* v. *G. N. Rail. Co.* (1847), 16 Sim. 3).

Two justices to nominate a surveyor.

59. Upon application by the promoters of the undertaking to two justices, and upon such proof as shall be satisfactory to them that any such party is, by reason of absence from the kingdom, prevented from treating, or cannot after diligent inquiry be found, or that any such party failed to appear on such inquiry before a jury as aforesaid, after due notice to him for that purpose, such justices shall, by writing under their hands, nominate an able practical surveyor for determining such compensation as aforesaid, and such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing, subscribed by him, of the correctness thereof.

Declaration to be made by the surveyor.

60. Before such surveyor shall enter upon the duty of making such valuation as aforesaid he shall, in the presence of such justices, or one of them, make and subscribe the declaration following at the foot of such nomination ; (that is to say,)

"I, A. B., do solemnly and sincerely declare, that I will faithfully, impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me.

"A. B.

"Made and subscribed in the presence of ."

And if any surveyor shall corruptly make such declaration, or having made such declaration shall wilfully act contrary thereto, he shall be guilty of a misdemeanor.

Valuation, etc., to be produced to the owner of the lands on demand.

61. The said nomination and declaration shall be annexed to the valuation to be made by such surveyor, and shall be preserved together therewith by the promoters of the undertaking, and they shall at all times produce the said valuation and other documents, on demand, to the owner of the lands comprised in such valuation, and to all other parties interested therein.

Expenses to be borne by promoters.

62. All the expenses of and incident to every such valuation shall be borne by the promoters of the undertaking.

Purchase-money and compensation, how to be estimated.

63. In estimating the purchase money or compensation to be paid by the promoters of the undertaking, in any of the cases aforesaid, regard shall be had by the justices, arbitrators, or surveyors, as the case may be, not only to the value of the land to be purchased or taken by the promoters of the undertaking, but also to the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise of the powers of this or the special Act, or any Act incorporated therewith.

See *In re City and South London Rail. Co. and St. Mary Woolnoth*, [1905] A. C. 1 ; *R.* v. *Mountford*, [1906] 2 K. B. 814; *L. & N. W. Rail. Co.* v. *Reddaway* (1907), 71 J. P. 150.

See also s. 49 and notes thereto, *ante*, pp. 1185 *et seq.*

Where compensation to absent party has been determined by a surveyor, the party may

64. When the compensation payable in respect of any lands, or any interest therein, shall have been ascertained by the valuation of a surveyor, and deposited in the bank under the provisions herein contained, by reason that the owner of or party entitled to convey such land or such interest therein as aforesaid could not be found or was absent from the kingdom, if such owner or party shall be dissatisfied with such valuation

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have the same submitted to arbitration.

it shall be lawful for him, before he shall have applied to the Court of Chancery for payment or investment of the monies so deposited under the provisions herein contained, by notice in writing to the promoters of the undertaking, to require the question of such compensation to be submitted to arbitration, and thereupon the same shall be so submitted accordingly, in the same manner as in other cases of disputed compensation hereinbefore authorised or required to be submitted to arbitration.

See ss. 25—37, *ante* pp. 1174-81, and s. 76, *post*, p. 1208.

Question to be submitted to the arbitrators.

65. The question to be submitted to the arbitrators in the case last aforesaid shall be, whether the said sum so deposited as aforesaid by the promoters of the undertaking was a sufficient sum, or whether any and what further sum ought to be paid or deposited by them.

If further sum awarded, promoters to pay or deposit same within fourteen days.

66. If the arbitrators shall award that a further sum ought to be paid or deposited by the promoters of the undertaking, they shall pay or deposit as the case may require, such further sum within fourteen days after the making of such award, or in default thereof the same may be enforced by attachment, or recovered, with costs, by action or suit in any of the superior courts.

Costs of the arbitration.

67. If the arbitrators shall determine that the sum so deposited was sufficient, the costs of and incident to such arbitration to be determined by the arbitrators, shall be in the discretion of the arbitrators ; but if the arbitrators shall determine that a further sum ought to be paid or deposited by the promoters of the undertaking, all the costs of and incident to the arbitration shall be borne by the promoters of the undertaking.

See 58 & 59 Vict. c. 11, *post*, p. 1259.

The provisions in the Public Health Act, 1875 (38 & 39 Vict. c. 55), with regard to arbitration, do not override the provisions of this Act where the subject-matter of the arbitration is a taking of lands ; hence, where lands are taken compulsorily, and the compensation is referred to arbitration, and the arbitrator awards a greater sum than that offered, s. 180 (13) of the Public Health Act, 1875, does not give him a discretion as to costs, but the landowner is entitled to them under this Act (*Ex parte Rayner* (1878), 3 Q. B. D. 446 ; *S. C., sub nom. R.* v. *Smith* (1878), 26 W. R. 812).

To be settled by arbitration or jury, at the option of the party claiming compensation.

68. If any party shall be entitled to any compensation in respect of any lands, or of any interest therein, which shall have been taken for or injuriously affected by the execution of the works, and for which the promoters of the undertaking shall not have made satisfaction under the provisions of this or the special Act, or any Act incorporated therewith, and if the compensation claimed in such case shall exceed the sum of fifty pounds, such party may have the same settled either by arbitration or by the verdict of a jury, as he shall think fit ; and if such party desire to have the same settled by arbitration, it shall be lawful for him to give notice in writing to the promoters of the undertaking of such his desire, stating in such notice the nature of the interest in such lands in respect of which he claims compensation, and the amount of the compensation so claimed therein ; and unless the promoters of the undertaking be willing

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to pay the amount of compensation so claimed, and shall enter into a written agreement for that purpose within twenty-one days after the receipt of any such notice from any party so entitled, the same shall be settled by arbitration in the manner herein provided; or if the party so entitled as aforesaid desire to have such question of compensation settled by jury, it shall be lawful for him to give notice in writing of such his desire to the promoters of the undertaking, stating such particulars as aforesaid, and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and enter into a written agreement for that purpose, they shall, within twenty-one days after the receipt of such notice, issue their warrant to the sheriff to summon a jury for settling the same in the manner herein provided, and in default thereof they shall be liable to pay to the party so entitled as aforesaid the amount of compensation so claimed, and the same may be recovered by him, with costs, by action in any of the superior courts.

Apart from the Lands Clauses Acts the general rule is that if promoters of an undertaking are authorised to do an act and do it in a proper manner, then although the act so done works a special injury to a particular individual, that individual cannot maintain an action, and is without remedy, unless a remedy is provided by statute (*East Fremantle Corporation* v. *Annois*, [1902] A. C. 213).

Claim and costs.

Sect. 38, which requires the promoters to give notice of the amount of compensation they are willing to pay before summoning the jury, and also s. 51, which gives the claimant the costs of the inquiry when he recovers more than the sum offered by the promoters, are incorporated with s. 68 (*S. E. Rail. Co.* v. *Richardson* (1852), 15 C. B. 810). See *Railstone* v. *York, Newcastle and Berwick Rail. Co.* (1850), 15 Q. B. 404; and *Hayward* v. *Metropolitan Rail. Co.* (1864), 33 L. J. Q. B. 73. As to whether the jury (or arbitrators) may award a larger sum than is claimed, see *Robertson* v. *City and South London Rail. Co.* (1904), 20 T. L. R. 395.

Separate interests.

Each claimant of a separate interest in the same premises is entitled to have his compensation assessed separately from the claims of any other claimant (*Abrahams* v. *London Corporation* (1868), L. R. 6 Eq. 625).

Injuriously affecting.

The words "lands . . . which shall have been taken for or injuriously affected" include such lands only as are actually taken or actually affected by the works of the undertakers (*Burkinshaw* v. *Birmingham and Oxford Junction Rail. Co.* (1850), 5 Ex. 475). As to when lands not immediately adjoining the land taken are injuriously affected within the meaning of the Act, see *Cowper-Essex* v. *Acton L. B.*, cited *ante*, p. 1187.

Diversion of stream.

The diversion of a stream is a taking and using it within the meaning of this Act, and before such diversion can be made the value of the stream must be ascertained and secured to the owners of the land through which it flows (*Ferrand* v. *Bradford Corporation* (1856), 21 Beav. 412). See other cases on this subject, cited *ante*, p. 383.

Damage from vibration.

The Lands Clauses and the Railways Clauses Acts do not contain any provisions under which a person, whose land has not been taken for the purposes of a railway, can recover statutory compensation from the railway company in respect of damage or annoyance arising from vibrations occasioned (without negligence) by the passing of trains after the railway is brought into use, even though the value of the property has been actually depreciated thereby. The right of action for such damage is taken away (*Hammersmith and City Rail. Co.* v. *Brand* (1868), L. R. 4 H. L. 171; *Canadian Pacific Rail. Co.* v. *Roy* (1902), A. C. 220). See also *R.* v. *Pease* (1832), 4 B. & Ad. 30; *Rickett* v. *Metropolitan Rail. Co.* (1867), L. R. 2 H. L. 175; *R.* v. *Metropolitan B. of W.* (1869), L. R. 4 Q. B. 358; *R.* v. *Cambrian Rail.*

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NOTE.

Co. (1871), L. R. 6 Q. B. 422; *Metropolitan B. of W.* v. *M'Carthy, infra; City of Glasgow Union Rail, Co.* v. *Hunter* (1870), L. R. 2 H. L. Sc. 78; and *Duke of Buccleuch* v. *Metropolitan B. of W., infra.*

Damage from smoke, steam, etc.

The defendants, a railway company, were authorised by their special Act (which incorporated the Lands Clauses and Railways Clauses Acts) to construct an underground railway. They accordingly constructed part of the railway in a tunnel, and, having purchased a piece of ground at the back of a dwelling-house, carried the tunnel through such ground, and made an aperture in the ground for the purpose of ventilating the tunnel. Some years afterwards the plaintiff became lessee of the house, and during his tenancy the defendants, with a view to the better ventilation of their line, enlarged the aperture, the effect of which was that the quantity of smoke, steam, and foul air coming from the railway to the plaintiff's house was much increased, and the house materially depreciated in value:—*Held*, that, whether the alteration was made by the defendants in the exercise of their rights as owners of the land, or under the powers conferred by s. 16 of the Railways Clauses Act, the plaintiff, according to the principle of *Hammersmith Rail. Co.* v. *Brand*, had no right to compensation, for the alteration would cause no damage to him if the line was not used, the damage arising, not from the construction, but from the working of the railway (*Attorney-General* v. *Metropolitan Rail. Co.*, [1894] 1 Q. B. 384).

River frontage.

A loss of river frontage is a ground for compensation (*Duke of Buccleuch* v. *Metropolitan B. of W.* (1871), L. R. 5 H. L. 418). So a loss of access to the sea (*R.* v. *Rynd* (1863), 16 Ir. C. L. 29; *North Shore Rail. Co.* v. *Pion* (1889), 14 App. Cas. 612). Where a dock belonged to a certain company, but was managed with another dock by a joint committee under a statute, the joint committee was held to have such an interest as entitled them to compensation on the principle of *Buccleuch* v. *Metropolitan B. of W.* (*London and India Docks Co.* v. *North London Rail. Co.*, Times, February 6th, 1903).

For a case of injury to a warehouse by taking away rights over a road, see *Re Great Eastern Rail. Co. and London County Council* (1907), 72 J. P. 1.

The making of a road adjoining a dwelling-house, if the road is on land taken, may also be regarded as injurious affection of the remaining land (*R.* v. *Mountford* (1906), 2 K. B. 814; and see *Re London and North Western Rail. Co. and Reddaway* (1907), 71 J. P. 150). But in *Horton* v. *Colwyn Bay U. D. C.* (1908), 1 K. B. 327, a case decided under the Public Health Act, 1878, it was held that if where land is taken from an owner, his remaining land is injuriously affected by the carrying on of the undertaking in connection with which his land was taken, but such injurious affection is not due to the part of the works constructed on the land taken from him, but to that constructed on other land, he is not entitled to compensation for such injurious affection.

The use of land for military purposes may cause injurious affection to the remaining land (*R.* v. *Abbott*, [1897] 2 I. R. 362; *Re Ned's Point Battery*, [1903] 2 I. R. 192; *Blundell* v. *R.*, [1905] 1 K. B. 516).

Compensation wherever act would have been actionable.

The general rule is, that where a company under their statutory powers, do that which but for such powers would have been actionable, they are liable to make compensation (*Glover* v. *North Staffordshire Rail. Co.* (1851), 20 L. J. Q. B. 376; *Metropolitan B. of W.* v. *M'Carthy* (1874), L. R. 7 H. L. 243; *Caledonian Rail. Co.* v. *Walker's Trustees* (1882), 7 App. Cas. 259). Thus an occasional flooding of lands caused by a proper execution of parliamentary powers is within s. 68 (*Ware* v. *Regent's Canal Co.* (1858), 3 De G. & J. 212). *Cf. Fletcher* v. *Rylands*, cited *ante*, p. 393. If a company does an authorised act in a negligent or unreasonable way it will be liable to an action for damages and, in a proper case, to an injunction; and the fact that a right to compensation is given by statute does not exclude the restraining jurisdiction of the court (*Roberts* v. *Charing Cross, etc. Rail. Co.* (1903), 87 L. T. 732; *Ash* v. *G. N. Piccadilly and Brompton Rail. Co.* (1903), 67 J. P. 417. Where, in consequence of the undertakers' works, certain flood waters were prevented from spreading themselves as formerly, and were penned up and flowed over a bank on the plaintiff's land, it was held, that though the defendants had properly constructed their works, they were nevertheless liable to make compensation (*Lawrence* v. *G. N. Rail. Co.* (1851), 16 Q. B. D. 643). In an action for injury caused by the leaking of water from a reservoir belonging to a canal, it was pleaded that the damage was caused by the leaking of water through the banks of the reservoir, and not in any manner whatsoever by reason of the execution of the powers of the Act, but by the default of the plaintiffs themselves in sinking shafts and pits in their own land, and so causing large quantities of water which naturally lay in the underground soil in which the pits and shafts were sunk, and which formed the banks and support of the said reservoir, to leak out and flow into the said shafts and pits:—*Held*, on demurrer, that the plea was bad (*Barber* v. *Nottingham and Grantham Rail. Co.* (1864), 33 L. J. C. P. 193). An obstruction to ancient lights may be also the subject of compensation under this section (*Bedford* (*Duke*) v. *Dawson* (1875), L. R. 20 Eq. 353; *Clark* v. *London School Board* (1874), L. R. 9 Ch. 120; *Emsley* v. *N. E. Rail. Co.*, [1896] 1 Ch. 418; *Courage & Co.* v. *S. E. Rail. Co.* (1903), 19 T. L. R. 61). The owner of a ferry, the traffic of which fell off through the construction of a railway bridge and footbridge, was held not entitled to compensation (*Hopkins* v. *G. N. Rail. Co.* (1877), 2 Q. B. D. 224; overruling *R.* v. *Cambrian Rail. Co.* (1871), L. R. 6 Q. B. 422; and see *Dibden* v. *Skirrow*, [1908] 1 Ch. 41). See *ante*, p. 1188.

The construction of a railway tunnel caused a subsidence of the soil whereby certain houses, not taken by the company, were structurally injured, and the owners thereupon became entitled to compensation under s. 68. Afterwards the owners assigned their interests to the plaintiff together with their rights to compensation. In an action by the plaintiff in her own name to recover the amount assessed by the jury, it was held that compensation for injurious affection under s. 68 was not in the nature of damages for a tort, and was a legal chose in action within s. 25 of the Judicature Act, 1873, and therefore that the plaintiff was entitled to sue as assignee in her own name (*Dawson* v. *G. N. and City Rail. Co.*, [1905] 1 K. B. 260).

No set off of benefit.

In assessing compensation to parties whose premises may be injuriously affected by works done under the authority of Parliament, the company are not entitled to set off any benefit accruing to such parties, or to the neighbourhood by the construction of the railway (*Senior* v. *Metropolitan Rail. Co.* (1863), 2 H. & C. 258).

The loss to the owner is tested by the value to him of the land taken and not by the value to the persons acquiring it. See *Stebbing* v. *Metropolitan B. of W.* (1870), L. R. 6 Q. B. 37; *Secretary of State for Foreign Affairs* v. *Charlesworth & Co.*, [1901] A. C. 373.

Compensation only payable in respect of acts *intra vires*.

Sect. 68 only gives compensation in cases where the incorporated company is doing what is authorised by statute, but which may nevertheless cause damage to an individual. Accordingly this section has been held to be inapplicable to cases where recourse may be had to an action at law for damages (*Imperial Gaslight Co.* v. *Broadbent* (1859), 7 H. L. Cas. 600). This last-mentioned case related to nuisance alleged to have been caused to the plaintiff's business through the carrying on of gasworks. Where the acts of a company are partly wrongful and partly authorised, the owner of property affected by these acts will only be entitled to compensation so far as the injury can be traced to the authorised acts (*Bigg* v. *London Corporation* (1873), 28 L. T. 336). See also *Piggott* v. *Middlesex C. C.*, [1909] 1 Ch. 134.

Prospective damages.

Prospective and contingent damages may be awarded (*Caledonian Rail. Co.* v. *Lockhart* (1860), 3 Macq. H. L. Cas. 808; and see *Croft* v. *L. & N. W. Rail. Co.* (1863), 3 B. & S. 436). Where prospective damages, being then unforeseen, had not been taken into account, it was held that the landowner was not precluded from insisting on a further claim in respect of such unforeseen damages subsequently sustained (*Lancashire and Yorkshire Rail. Co.* v. *Evans* (1853), 15 Beav. 322; and see also *Lawrence* v. *G. N. Rail.*

Co. (1851), 16 Q. B. 643; and *In re Ware* (1854), 9 Ex. 395). But where the damage could reasonably have been foreseen, it should be assessed at the time of the original assessment (*R.* v. *Leeds and Selby Rail. Co.* (1835), 3 A. & E. 683).

Easements. The word "lands" does not include easements (*Pinchin* v. *London and Blackwall Rail. Co.* (1854), 5 De G. M. & G. 851; *Bird* v. *G. E. Rail. Co.* (1865), 19 C. B. (N.S.) 268; *Temple Pier Co.* v. *Metropolitan B. of W.* (1865), 34 L. J. Ch. 262; *Macey* v. *Metropolitan B. of W.* (1864), 33 L. J. Ch. 377; *Thicknesse* v. *Lancaster Canal Co.* (1838), 4 M. & W. 472; and see *London School Board* v. *Foster* (1903), 87 L. T. 700). Nor are persons who have merely a licence to use the land entitled to claim compensation (*Frank Warr & Co., Ltd.* v. *London C. C.*, [1904] 1 K. B. 713). But where land is injuriously affected by reason of interference with easements (such as ancient lights) attaching thereto, compensation is payable therefor (*Eagle* v. *Charing Cross Rail. Co.* (1867), L. R. 2 C. P. 638; *Clarke* v. *London School Board* (1874), L. R. 9 Ch. 120; *Wigram* v. *Fryer* (1887), 36 Ch. D. 87; *cf. R.* v. *Poulter* (1887), 20 Q. B. D. 132; *In re L. T. & S. Rail. Co. and Trustees of Gower's Walk Schools* (1889), 24 Q. B. D. 326). Where land is injuriously affected by the carrying into effect of an improvement scheme under the provisions of the Housing of the Working Classes Act, 1890, such as the extinguishment under s. 22 of the Act of an easement appurtenant to premises adjoining but not included in the scheme, the arbitrator in determining the compensation to be paid to the owner of the easement for the loss sustained by him by reason of the operation of the Act, cannot take into consideration the loss of trade or diminution in value of the goodwill of the business carried on at the premises enjoying the easement (*In re Harvey and London C. C.*, [1909] 1 Ch. 528; [1909] W. N. 18).

Water pipes. The Midland Railway Company, under one of their Acts of Parliament, took land under which the plaintiffs' water pipes were laid. The pipes were buried beneath the railway company's embankment, and ceased to be used. Afterwards, in making a tunnel, the railway company took up the pipes. Plaintiffs claimed compensation for the value of the pipes under s. 68:—*Held*, that the plaintiffs had no interest in land, and therefore were not entitled to compensation under the Lands Clauses Act (*New River Co.* v. *Midland Rail. Co.* (1877), 36 L. T. 539).

Cotton mills. A railway company took land on which cotton mills would probably have been built. The owner had other land on which he had built a reservoir from which water might be supplied to such cotton mills when built. In proceeding under the Lands Clauses Act to ascertain the compensation, the umpire received evidence as to the profits which might have been derived from supplying water to the mills when built, and awarded compensation for the loss of those prospective profits;—*Held*, that the umpire was right in receiving the evidence and in awarding such compensation (*Ripley* v. *G. N. Rail. Co.* (1875), L. R. 10 Ch. 435).

Leasehold interests. A lessee having a reasonable expectation of a renewal of his lease, but having no right to demand such a renewal, is not entitled to compensation in respect of such expectancy (*R.* v. *Liverpool and Manchester Rail. Co.* (1836), 4 A. & E. 650). See a similar decision in Scotland: *Lynch* v. *Glasgow Corporation* (1903), 40 S. L. R. 860. Nor can a lessee recover in respect of land leased to him after the date of the notice to treat (*Mercer* v. *Liverpool, St. Helens and South Lancashire Rail. Co.*, [1904] A. C. 461; and see *Zick* v. *London United Tramways, Ltd.*, [1908] 1 K. B. 126). But beneficial covenants in a lease may be taken into account in assessing the compensation payable to a lessee (*Bourne* v. *Liverpool Corporation* (1863), 33 L. J. Q. B. 15; *Re Chandler's Wiltshire Brewery Co. and London C. C.*, [1903] 1 K. B. 569). If a lessee holds land under a lease determinable at certain fixed dates, the value of his interest will be assessed as at the date of the notice, the probability at that date of the lease being determined being taken into account (*Re Athlone Rifle Range* (1902), 1 I. R. 433); and see *Eldon* v. *N. E. Rail. Co.* (1899), 80 L. T. 723. See further as to compensation for lessee's interest, *Johnson* v. *Edgware, etc. Rail. Co.* (1886), 14 L. T. 45; *Ex parte Luntley* (1865), 13 L. T. 490;

Re Collis's Estate (1866), 14 L. T. 352; and *Re North's Estate* (1868), 19 L. T. 43. As to precarious interests, *e.g.*, the right of a volunteer corps to shoot over land taken, see *Holt* v. *Gaslight and Coke Co.* (1872), L. R. 7 Q. B. 728; and see *M. S. & L. Rail. Co.* v. *Anderson*, [1898] 2 Ch. 394.

A tramway company compulsorily acquired the frontage of premises which were subject to a lease, and the lessor had claimed a certain sum as the present value of the frontage deferred until the expiration of the lease, and had accepted an offer by the company of a smaller sum "for the purchase of the interest claimed by you." The lessee, on assigning his interest in the frontage, covenanted with the company to pay the whole rent reserved by his lease. On an originating summons, the lessor asked to be declared entitled to require the company to procure from the lessee at their expense, a covenant by the lessee unto the lessor to pay the whole rent reserved without deduction for severance:—*Held*, that as the lessor had not put forward his claim on the ground that he would be deprived of any portion of the rent, there was no contract between the lessor and the company for the covenant as asked (*In re Way and London United Tramways Co., Ltd.* (1908), 125 L. T. Jo. 594).

Tenant from year to year.

Where no part of the lands of a tenant from year to year are taken by the undertakers, but his interest in the lands is injuriously affected by the works, he is entitled to claim compensation and to have it determined under s. 68 before a jury or arbitrators; and his case does not come within s. 121, which provides for the assessment of the compensation being made before justices only when some part of the lands is required by the company (*R.* v. *Sheriff of Middlesex* (1862), 31 L. J. Q. B. 261).

Arrears of rent, the recovery of which was rendered impossible by reason of the taking of land, have been held too remote (*Re Kilworth Rifle Range* (1899), 2 Ir. R. 305).

In assessing the value of minerals to be left unworked, the future possibility of rise in price should be taken into account, and if a rise in fact takes place between the date of the service of the notice requiring the minerals to be left unworked, and the date of the arbitration, which rise was wholly unexpected and could not have been estimated at the date of the notice, the arbitrator may take that fact into account in assessing the compensation (*Bwllfa and Merthyr Dare Steam Collieries* (1891), *Ltd.* v. *Pontypridd Waterworks Co.*, [1903] A. C. 426).

Principle in valuation of land.

"A jury, whether the dispute be as to the value of land required to be taken by the company or as to the compensation for damages by severance, in assessing the amount to which the landowner is entitled, have to consider the real value of the land, and may take into account not only the present purpose to which the land is applied but also every other more beneficial purpose to which in the course of events at no remote period it may be applied, just as an owner might do if he were bargaining with a purchaser in the market": *per* Cockburn, C.J., in *R.* v. *Brown* (1867), L. R. 2 Q. B. 630, 631; and see *Bailey* v. *Isle of Thanet Light Railways*, [1900] 1 Q. B. 722; *City and South London Rail. Co.* v. *St. Mary Woolnoth and St. Mary Woolchurch Haw* (*United parishes*), [1905] A. C. 1.

Special adaptability of land taken for the construction of reservoirs, etc., may be taken into consideration by the tribunal of arbitration (*In Ossalinsky and Manchester Corporation*; see the judgment set out in Browne and Allan on Compensation, at p. 718). The same point was again raised, and on a case stated was decided by the Court of Appeal in the same way in *In re An Arbitration between Gough and the Aspatria, Silloth and District Water Board*, [1904] 1 K. B. 417. See *Riddell* v. *Newcastle and Gateshead Waterworks Co.*, reported in Browne and Allan's Law of Compensation, 2nd ed, p. 678, and in Mr. Frank Balfour Browne's Law of Compensation, at p. 14, now reported 90 L. T. 44 n.; and see also *Abingdon* (*Earl*) v. *Bury Corporation*, referred to Jl. G. L., June 6th, 1899, p. 502.

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For the purposes of a reservoir, the Corporation of Tynemouth sought to take three parcels of land belonging to three different owners. Each parcel, taken in connection with the other two, made a suitable site for the reservoir. The arbitrator "in determining the value of the land of each claimant, had regard to its natural character and position, and its proximity to the other parcels of land and to the probability that if ever there was a demand for the three parcels of land for the purpose of one entire reservoir site, the owner of each of the three parcels would, by reason of the natural character and position of the land rendering its combination with the others necessary have obtained some enhanced value for the parcel belonging to him; that in his judgment, the extent of such enhancement would not be the same in each of the three cases, nor ought he to attach the same value per acre, to each of the three parcels of land." The arbitrator in his award stated a special case. WRIGHT, J., decided that the principle on which the arbitrator proceeded was correct (*In re Tynemouth Corporation and Duke of Northumberland; the same and Trevelyan; the same and Orde* (1903), 67 J. P. 425; and see *Re Lucas and Chesterfield Gas and Water Board*, [1909] 1 K. B. 16).

Loss of trade or goodwill.

Where the premises are taken, loss of trade or goodwill may be taken into account (*White* v. *Commissioners of Works* (1870), 22 L. T. 591). See *Cooper* v. *Metropolitan B. of W.* (1885), 25 Ch. D. 472; *Pile* v. *Pile, Ex parte Lambton* (1876), 3 Ch. D. 36; and *Caledonian Rail. Co.* v. *Walker's Trustees* (1882), 7 App. Cas. 259.

Thames conservancy.

The Thames conservators are entitled to be compensated for any portion of the bed of the river taken for such purposes as the construction of railway bridges (*Conservators of River Thames* v. *Victoria Station Co.* (1868), L. R. 4 C. P. 59). As to the principle on which compensation to the conservators should be assessed, see *Conservators of River Thames* v. *L. T. & S. Rail. Co.* (1893), 68 L. T. 21.

Injury to access, etc.

In *Caledonian Rail. Co.* v. *Walker's Trustees* (1882), 7 App. Cass. 259, all the more important cases relating to the injuriously affecting of lands were reviewed. Certain trustees were possessed of a spinning mill ninety yards from an important main thoroughfare in Glasgow, having parallel accesses on the level from two sides of the mill to the thoroughfare. A railway company, under their special Act, cut off entirely one access, substituting therefor a deviated road over a bridge with steep gradients, and the other access they diverted and made less convenient; but none of the operations were carried on *ex adverso* the premises. When the Bill was before Parliament the trustees were induced to withdraw their opposition in consideration of an agreement, by which the company undertook that, in the event of the land of the trustees and of others being injuriously affected by the construction of any of the works proposed by the Bill, their claim to compensation should not be barred by reason of the company not taking part of their land. The trustees claimed compensation for the diminished value of their premises by reason of the detour and gradients:—*Held*, that though the agreement gave no right to compensation, the trustees were entitled to it under the Railways and Lands Clauses Consolidation (Scotland) Acts, 1845. *Per* Lord SELBORNE, L.C.: "The obstruction of access to a private property by a public road need not be *ex adverso*, but it must be proximate and not remote or indefinite to entitle the owner of that property to compensation for the loss of it." And it is a question whether a mere change of gradient alone would be a proper subject for compensation. The case arose under s. 6 of the Railways Clauses (Scotland) Act, 1845 (similar to the English Act), which provides, *inter alia*, that the railway company "shall make to the owners and occupiers of and all other parties interested in any lands taken . . . or injuriously affected by the construction thereof, full compensation for the value of the lands so taken, and for all damage sustained by such owners," etc. And it then cites the Lands Clauses Consolidation (Scotland) Act, 1845, as the machinery by which compensation is to be adjudged. The effect of the decision is—(1) That in order to found a claim for compensation under this section some special or peculiar damage must be done to the lands by reason of the construction of the works, which diminishes the value of the lands, which damage would have been the subject

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of an action at law before the statute; and (2) that, therefore where an access to private property by a public highway or private way is interfered with by the construction of the works, and the value of the property, irrespective of any particular use which may be made of it, is so dependent upon the existence of that access as to be substantially diminished by its obstruction, then the owner is entitled to compensation for such interference; but (3) that no compensation is given for damages if the thing done was one for which, if done without any statutory power, no action could have been maintained; nor when a right of action which would have existed if the works had not been authorised by statute would have been merely personal; nor when damage arises not out of the execution, but only out of the subsequent use of the works; nor for the loss of trade or custom by reason of a work not otherwise affecting the house in or upon which the trade has been carried on. See *Fleming* v. *Newport Rail. Co.* (1883), 8 App. Cas. 265 (which turned on a clause in a feu contract); *Wadham* v. *N. E. Rail. Co.* (1885), 14 Q. B. D. 747; *S. C.* on appeal, 16 Q. B. D. 227 (which related to the stopping up of a street in which were a house and premises used as a hotel); *Ford* v. *Metropolitan, etc. Rail. Cos.* (1876), 17 Q. B. D. 12 (interference with a hall of a house, and thus with the access to rooms at the back); and *Furness Rail Co.* v. *Cumberland Building Society* (1886), 52 L. T. 144 (where the levels of a street adjoining the claimants' premises were altered); *Beckett* v. *Midland Rail. Co.* (1867), L. R. 3 C. P. 82 (where an embankment was erected on a portion of a highway opposite the plaintiffs' house, thereby narrowing the road from fifty to thirty-three feet). *Cf.* the following cases, in which no compensation was held to be payable: *Attorney-General and Hare* v. *Metropolitan Rail. Co.*, [1894] 1 Q. B. 384 (which related to the alteration of a ventilating shaft); *Birkenhead Corporation* v. *L. & N. W. Rail. Co.* (1885), 15 Q. B. D. 572 (which related to the construction of a railway embankment over a sewer, rendering access to it less easy and convenient); *Hopkins* v. *G. N. Rail. Co.* (1877), 2 Q. B. D. 224 (which related to loss of traffic on a ferry, owing to the construction of a bridge). And see *London and Blackwall Rail. Co.* v. *Cross* (1885), 31 Ch. D. 354.

Occupation road.

Where a railway company laid a line along an occupation road and ran trains for the purpose of carrying the plant and certain necessary materials for the construction of certain authorised lines, it was held that the plaintiff was not entitled to an injunction, but that he had his remedy under s. 68 because his property had been injuriously affected (*Barnard* v. *G. W. Rail. Co.* (1902), 86 L. T. 798).

Colliery.

A lease of a colliery with its buildings, pits, shafts, and works, together with the veins of coal under a specified acreage of adjoining land, the surface of which was not included in the demise, contained a proviso that the lessee might at any time during the term sink a pit or pits in any part of the lands, the surface of which was not demised, but so that the position of the pits should be subject to the reasonable approval of the lessor. The lessor having contracted to sell a portion of the surface to a railway company, the company gave to the lessee a notice to treat in respect of his interest in the surface of the land taken by them, and the lessee gave to the lessor notice under the lease of his intention to sink a pit in the land so taken:—*Held*, that the right to sink a pit in the land, the surface of which was not included in the demise, although subject to the reasonable approval of the lessor, gave the lessee an interest in land which was the subject of compensation under s. 68 (*In re Masters and the G. W. Rail. Co.*, [1900] 2 Q. B., p. 677; affirmed C. A., [1901] 2 K. B. 84).

Market garden.

An arbitrator in estimating the value of a tenant's interest in two acres of a market garden taken by a railway company under compulsory powers took into consideration the following facts, which he held to be proved:—(1) that for three years the ground taken had been under preparation for growing fruit trees, etc., in the shelter of glass houses of a special construction, which the tenant was about to erect, but had not erected when he received notice to treat; (2) that it would take three years to prepare other ground for the same purpose; and (3) that the annual profit the tenant would reasonably have been expected to have made during the three years was £250 per acre,

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and on this basis fixed the compensation for loss of profit during the three years. In an action of reduction of the arbitrator's award brought by the railway company, on the ground that he had allowed compensation for profit to be derived from buildings which were not on the ground at the date of the notice to treat:—*Held*, that it was within the arbitrator's jurisdiction to determine the profit the tenant would probably have made from the ground had he not been disturbed in his possession, that the award was not *ultra vires*, and that the court had no jurisdiction to disturb it (*Lanarkshire and Dumbartonshire Rail. Co.* v. *Main* (1895), Ct. of Sess. Cas., 22 Rettie, 912).

Land for public park.

The claimants demised land to a corporation at a low rent on condition of its being laid out and maintained as a public park. The lease contained a proviso that in case any part of the land should be compulsorily taken under the powers of any Act of Parliament it should be lawful for the claimants to re-enter upon and re-possess it. Part of the land having been compulsorily taken by a railway company under the powers of an Act of Parliament:—*Held*, that the claimants were entitled to the commercial value of the land taken as freed from the lease, and not merely to the capitalised value of the rent paid therefor by the corporation (*In re An Arbitration between Morgan and L. & N. W. Rail. Co.*, [1896] 2 Q. B. 469).

Land intended for school.

Certain individuals bought some land with the intention of building a ladies' school upon it, for which purpose it was specially adaptable. Before they had begun to build they received notice from a railway company to treat for the purchase of part of the land. In consequence of the construction of the railway the part of the land not taken by the company would be rendered less suitable for the purpose of a school, and there was no other site in the neighbourhood equally suitable for that purpose:—*Held*, that in assessing the compensation payable to the claimants their intention to use the site for a school ought to be taken into consideration, although they had done nothing towards carrying that intention into execution (*Bailey* v. *Isle of Thanet Light Rail. Co.*, [1900] 1 Q. B. 722).

Where land was acquired compulsorily for the purpose of a school, it was held that, in assessing compensation, the damage or inconvenience caused to the rest of the claimant's property by reason of noise might rightly be taken into consideration (*R.* v. *Pearce, Ex parte London School Board* (1898), 67 L. J. Q. B. 842; 78 L. T. 681; 14 T. L. R. 465).

Licensed premises.

It was held that in estimating the compensation to be paid under the Lands Clauses Acts to a claimant in respect of the reversion of licensed premises under a lease, of which twenty-six years were unexpired, the arbitrator was entitled and ought to admit evidence to prove the present market value; that is, the price that would be made in the open market of the claimant's reversionary interest in the premises as licensed premises, and was not bound to confine the evidence to the estimated rental value of the premises as a house and shop apart from the question of whether when the reversion fell in they would then be licensed premises (*Belton* v. *London C. C.* (1893), 62 L. J. Q. B. 222).

Money laid out on land.

Money *bonâ fide* spent on land is not conclusive evidence that the land is worth so much (*Streatham Estates Co.* v. *Public Works Commissioners* (1888), 52 J. P. 615).

Sewers.

Under a local improvement Act which incorporated the Lands Clauses Act, power was given to the corporation to lay sewers in lands, making full compensation for any damage, and where the method of recovering compensation was not provided, two justices might hear and determine the same:—*Held*, that though nothing was said about costs, full compensation necessarily included the costs of applying to justices (*Huddersfield Corporation* v. *Shaw* (1890), 54 J. P. 724).

Breach of restrictive covenants.

When an education authority acquire land, whether by agreement or compulsion, for the purpose of the Elementary Education Act, 1870, and purchase with notice of a restrictive covenant to which the land was subject in the hands of the vendor, the covenantee cannot maintain an action against the education authority for breach of covenant; his only remedy is compensation under s. 68 (*Kirby* v. *Harrogate School Board*, [1896] 1 Ch. 437).

Certain land was under restrictive covenant in favour of the owner of adjoining land not to erect thereon "any building other than private dwelling houses." A railway company took the land and built thereon a railway embankment:—*Held*, that the adjoining land was injuriously affected within the meaning of s. 68 (*Long Eaton Recreation Grounds Co.* v. *Midland Rail. Co.*, [1902] 2 K. B. 574).

Outlay after notice.

The owner of houses in a dilapidated condition, whilst repairing them, was informed that a provisional order had been made enabling a public body to take the houses, and that the order was about to be confirmed by Act of Parliament. The owner refused to stop the repairs. The Act was afterwards obtained, and an arbitrator appointed:—*Held*, that the owner was entitled to be compensated for the outlay made by him between the date of the notice to him and the appointment of the arbitrator (*Higgins* v. *Dublin Corporation* (1891), 28 L. R. Ir. 484). See *Birmingham and District Land Co.* v. *L. & N. W. Rail. Co.* (1888), 40 Ch. D. 268.

Misnomer.

A misnomer, not calculated to mislead, in the name of the company occurring in the notice under the 68th section, will not vitiate such notice (*Eastham* v. *Blackburn Rail. Co.* (1854), 9 Ex. 758).

Interest of claimant.

In order to bring himself within the 68th section, a claimant must give, in his notice for a jury, such reasonable information as to his interest as will enable the promoters to judge whether they will pay the whole claim, or what amount they ought to offer; and where a claimant is occupier under a lease for years, it is not sufficient to state in the notice that he "holds under a lease" (*Healey* v. *Thames Valley Rail. Co.* (1864), 5 B. & S. 769). See *Cameron* v. *Charing Cross Rail. Co.* (1864), 16 C. B. (N.S.) 430.

Where a leaseholder filed a bill against a railway company for an injunction to restrain them from proceeding with their works to the injury of his premises adjoining until they should properly entitle themselves to do so, and the company erected a hoarding so as to prevent the progress of their works from being seen by him, the court ordered the company to give access to him, his surveyors and builders, to go over and view the works carried on close to his premises at all reasonable times of the day upon his giving half-an-hour's notice (*Saul* v. *Metropolitan Rail. Co.* (1867), 16 L. T. (N.S.) 169).

A person may have right to compensation when any part of his land or an easement is taken for things which otherwise would not be ground for compensation (*Buccleuch* (*Duke*) v. *Metropolitan B. of W.* (1871), L. R. 5 H. L. 418).

Public rights.

As to interference with public rights (*e.g.*, public right of way), see *R.* v. *Metropolitan B. of W.* (1869), L. R. 4 Q. B. 358; *Rangeley* v. *Midland Rail. Co.* (1868), L. R. 3 Ch. 306. As to crossing footpaths, see *Dartford R. D. C.* v. *Bexley Heath Rail. Co.*, [1898] A. C. 210.

Effect of incorporation of Act of 1845.

When a special Act incorporates the whole of the Land Clauses Act, such incorporation is sufficient to give persons injuriously affected a right to compensation, without any provisions to that effect in the special Act (*R.* v. *Vestry of St. Luke's, Chelsea* (1871), L. R. 7 Q. B. 148). See also *Ferrar* v. *Commissioners of Sewers of London* (1869), L. R. 4 Ex. 227; *Dungey* v. *London Corporation* (1869), 38 L. J. C. P. 298; and *R.* v. *London Corporation* (1867), L. R. 2 Q. B. 292.

Subsoil.

Where a special Act, incorporating the Lands Clauses Acts, authorised a railway company to construct an underground railway and to "appropriate and use the subsoil and under surface" of certain lands subject to the liability to make compensation under s. 68, it was held that they could not appropriate and use the subsoil without giving notice to treat and otherwise complying with the provisions of the Lands Clauses Acts as to the purchase of land (*Farmer* v. *Waterloo and City Rail. Co.*, [1895] 1 Ch. 527).

Wayleaves.

As to the principle of compensation in wayleave cases, see *Martin* v. *Porter* (1839), 5 M. & W. 351; *Jegon* v. *Vivian* (1871), L. R. 6 Ch. 742; *Phillips* v. *Homfray* (1871), L. R. 6 Ch. 770; and *N. E. Rail. Co.* v. *Lord Hastings*, [1900] A. C. 260. Where the company trespassed on the plaintiff's land by tipping spoil thereon from their colliery, it was held that the amount

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of damages was not to be assessed by ascertaining merely the diminution in value of the plaintiff's land, but that the principle of the wayleave cases applied (*Whitwham* v. *Westminster Brymbo Coal and Coke Co.*, [1896] 2 Ch. 538).

Action to recover compensation money.

Where after notice to treat, the amount of compensation to be paid for land compulsorily taken has been fixed by an award under the Lands Clauses Act, 1845, an action for such compensation cannot be maintained until a conveyance of the land has been executed (*Guardians of East London Union* v. *Metropolitan Rail. Co.* (1869), L. R. 4 Ex. 309).

Interest on compensation money.

In the case of a compulsory purchase under the Lands Clauses Act, interest is payable to the vendor by the purchaser from the time when possession might have been taken, it appearing that a good title could have been shown. And the land being subject to mortgage, interest is payable by the vendor to the mortgagee in lieu of notice (*Spencer-Bell* v. *L. & S. W. Rail. Co.* (1885), 33 W. R. 771).

As to the assessment of compensation in respect of lands in the possession of any person having no greater interest therein than as tenant for a year or from year to year, see *post*, s. 121, and the notes thereto.

Ground annuals in Scotland.

As to the valuation of ground annuals in Scotland, see *Jenkins* v. *N. B. Rail. Co.* (1901), 17 Sheriff Court Rep. 278; Surveyors Inst. Prof. Notes, Vol. II., p. 10 of Scots. Supplt.

APPLICATION OF COMPENSATION.

And with respect to the purchase money or compensation coming to parties having limited interests, or prevented from treating, or not making title, be it enacted as follows:

Purchase money payable to parties under disability amounting to £200 to be deposited in the Bank.

69. If the purchase money or compensation which shall be payable in respect of any lands, or any interest therein, purchased or taken by the promoters of the undertaking from any corporation, tenant for life or in tail, married woman seized in her own right or entitled to dower, guardian, committee of lunatic or idiot, trustee, executor or administrator, or person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same except under the provisions of this or the special Act, or the compensation to be paid for any permanent damage to any such lands, amount to or exceed the sum of two hundred pounds, the same shall be paid into the Bank, in the name and with the privity of the Accountant-General of the Court of Chancery* . . . to be placed to the account there of such Accountant-General, ex parte the promoters of the undertaking, (describing them by their proper name,) in the matter of the special Act (citing it,) pursuant to the method prescribed by any Act for the time being in force for regulating monies paid into the said courts; and such monies shall remain so deposited until the same be applied to some one or more of the following purposes; (that is to say,)

Application of monies deposited.

In the purchase or redemption of the land tax, or the discharge of any debt or incumbrance affecting the land in respect of which

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* By 35 & 36 Vict. c. 44, the office of Accountant-General of the Court of Chancery was abolished, and the duties transferred to her Majesty's Paymaster-General. See Judicature Act, 1875 (38 & 39 Vict. c. 77), ss. 24, 30. The last mentioned section is in part repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54).

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such money shall have been paid, or affecting other lands settled therewith to the same or the like uses, trusts, or purposes; or

In the purchase of other lands to be conveyed, limited, and settled upon the like uses, trusts, and purposes, and in the same manner, as the lands in respect of which such money shall have been paid stood settled; or

If such money shall be paid in respect of any buildings taken under the authority of this or the special Act, or injured by the proximity of the works, in removing or replacing such buildings, or substituting others in their stead, in such manner as the Court of Chancery shall direct; or

In payment to any party becoming absolutely entitled to such money.

Certain words omitted repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

See *In re Robinson's Settlement Trusts*, [1891] 3 Ch. 129.

This section is confined to cases where the purchase money or compensation amounts to or exceeds £200. Where the amount is less than £200 and is more than £20, the case is governed by s. 71; and where the amount does not exceed £20, by s. 72. The interim investment of the money is provided for by s. 70.

By the Supreme Court Funds Rules, 1894, r. 39, it is provided that: "Money lodged in court in the Chancery Division pursuant to the 69th section of the Lands Clauses Consolidation Act, 1845, in respect of land in England or Wales, shall be placed in the books at the Pay Office to the credit of ex parte the promoters of the undertaking, in the matter of the special Act (citing it), and some words shall be added in each case briefly expressive of the nature of the disability to sell and convey, by reason of which the money shall be so paid in, which particulars shall be stated in the request for the direction for the lodgment."

Where land allotted by an enclosure award of 1834 to a highway surveyor for road materials was bought by a railway company under their compulsory powers and the purchase money was paid into court, the dividends thereon being paid to the surveyor for the time being, it was held that subject to the consent of the Local Government Board the money might be paid out to an urban district council under this section as they had become absolutely entitled to it under s. 41 of the Sale of Exhausted Parish Lands Act, 1876 (*Re Brumby and Frodingham U. D. C.*, 69 J. P. 96).

For the numerous cases which have arisen in regard to the payment into court of the purchase or compensation money, the investment and re-investment thereof, the application of the fund in court, and the payment out of court, the forms of conveyances of land under the Act, and the question of costs and the taxation thereof, with regard to these several matters—under ss. 69—83 inclusive—see Seton on Judgments.

The trustees of a charity empowered to sell with the consent of the bishop are parties *absolutely entitled* within the meaning of this section (*In re Sheffield Corporation and the Trustees of St. William's R. C. Chapel and Schools*, [1903] 1 Ch. 208). See also on this point *Ex parte Woolwich Borough Council*, [1908] W. N. 56 and *Ex parte the Great Western Rail. Co.*, [1909] W. N. 202 in which the decision in the Woolwich case was observed upon, and also *Re Islington Borough Council* (1907), 71 J. P. 396.

Order for application and investment meanwhile.

70. Such money may be so applied as aforesaid upon an order of the the Court of Chancery . . . made on the petition of the party who would have been entitled to the rents and profits of the lands in respect

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of which such money shall have been deposited ; and until the money can be so applied it may, upon the like order, be invested by the said Accountant-General* in the purchase of three per centum consolidated or three per centum reduced bank annuities, or in Government or real securities, and the interest, dividends, and annual proceeds thereof paid to the party who would for the time being have been entitled to the rents and profits of the lands.

Certain words omitted repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

Where a petition is presented for the payment out of court of two funds of unequal value which were paid in under the Lands Clauses Act, 1845, the funds representing the purchase money of lands acquired by two railway companies respectively, it is the settled practice that the brokerage on selling the two funds must be borne by the two companies in equal shares and not apportioned according to the value of the funds (*Ex parte Emmanuel Hospital* (1908), 24 T. L. R. 261).

Sums from £20 to £200 to be deposited, or paid to trustees.

71. If such purchase money or compensation shall not amount to the sum of two hundred pounds, and shall exceed the sum of twenty pounds, the same shall either be paid into the Bank, and applied in the manner hereinbefore directed with respect to sums amounting to or exceeding two hundred pounds, or the same may lawfully be paid to two trustees, to be nominated by the parties entitled to the rents or profits of the lands in respect whereof the same shall be payable, such nomination to be signified by writing under the hands of the party so entitled ; and in case of the coverture, infancy, lunacy, or other incapacity of the parties entitled to such monies, such nomination may lawfully be made by their respective husbands, guardians, committees, or trustees ; but such last-mentioned application of the monies shall not be made unless the promoters of the undertaking approve thereof, and of the trustees named for the purpose ; and the money so paid to such trustees, and the produce arising therefrom, shall be by such trustees applied in the manner hereinbefore directed with respect to money paid into the Bank, but it shall not be necessary to obtain any order of the court for that purpose.

Sums not exceeding £20 to be paid to parties.

72. If such money shall not exceed the sum of twenty pounds, the same shall be paid to the parties entitled to the rents and profits of the lands in respect whereof the same shall be payable, for their own use and benefit ; or in case of the coverture, infancy, idiotcy, lunacy, or other incapacity of any such parties, then such money shall be paid, for their use, to the respective husbands, guardians, committees, or trustees of such persons.

All sums payable under contract with persons not absolutely entitled, to be paid into Bank.

73. All sums of money exceeding twenty pounds which may be payable by the promoters of the undertaking in respect of the taking, using, or interfering with any lands under a contract or agreement with any person who shall not be entitled to dispose of such lands, or of the interest therein contracted to be sold by him, absolutely for his own benefit, shall be paid into the Bank or to trustees in manner aforesaid ;

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* Now Paymaster-General : see footnote, *ante*, p. 1204.

and it shall not be lawful for any contracting party not entitled as aforesaid to retain to his own use any portion of the sums so agreed or contracted to be paid for or in respect of the taking, using, or interfering with any such lands, or in lieu of bridges, tunnels or other accommodation works, or for assenting to or not opposing the passing of the Bill authorising the taking of such lands, but all such monies shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession as in remainder, reversion, or expectancy: Provided always, that it shall be in the discretion of the Court of Chancery . . . or the said trustees, as the case may be, to allot to any tenant for life, or for any other partial or qualified estate, for his own use, a portion of the sum so paid into the Bank or to such trustees as aforesaid, as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken, and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works.

Certain words omitted repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

Where a company had acquired some glebe land under their compulsory powers and had paid into court £1,600, the compensation awarded in a lump sum by two surveyors, it was held that, on reading affidavits by the surveyors to the effect that £100 of this sum was allowed by them in consideration of personal inconvenience and annoyance, this £100 might be paid out to the rector for his own use under this section (*In re Saunderton Glebe Lands*, [1903] 1 Ch. 480; and see *Ex parte Vicar of Sheffield* (1904), 68 J. P. 313).

Court of Chancery may direct application of money in respect of leases or reversions as they may think just.

74. Where any purchase money or compensation paid into the Bank under the provisions of this or the special Act shall have been paid in respect of any lease for a life or lives or years, or for a life or lives and years, or any estate in lands less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate, it shall be lawful for the Court of Chancery . . . on the petition of any party interested in such money, to order that the same shall be laid out, invested, accumulated, and paid in such manner as the said court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be.

Certain words omitted repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

See *In re Barrington, Gamlen* v. *Lyon* (1886), 33 Ch. D. 523, and *In re Robinson's Settlement Trusts*, [1891] 3 Ch. 129.

Upon deposit being made, the owners of the lands to convey, or in default the

75. Upon deposit in the Bank in manner hereinbefore provided of the purchase money or compensation agreed or awarded to be paid in respect of any lands purchased or taken by the promoters of the undertaking under the provisions of this or the special Act, or any Act incorporated therewith, the owner of such lands, including in such term

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lands to vest in the promoters of the undertaking upon a deed poll being executed.

all parties by this Act enabled to sell or convey lands, shall, when required so to do by the promoters of the undertaking, duly convey such lands to the promoters of the undertaking, or as they shall direct; and in default thereof, or if he fail to adduce a good title to such lands to their satisfaction, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal if they be a corporation, or if they be not a corporation, under the hands and seals of the promoters, or any two of them, containing a description of the lands in respect of which such default shall be made, and reciting the purchase or taking thereof by the promoters of the undertaking, and the names of the parties from whom the same were purchased or taken, and the deposit made in respect thereof, and declaring the fact of such default having been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party between whom and the promoters of the undertaking such agreement shall have been come to, or as between whom and the promoters of the undertaking such purchase money or compensation shall have been determined by a jury, or by arbitrators, or by a surveyor appointed by two justices, as herein provided, and shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking; and as against such parties, and all parties on behalf of whom they are hereinbefore enabled to sell and convey, the promoters of the undertaking shall be entitled to immediate possession of such lands.

The promoters of the undertaking are bound to take a conveyance (*In re Cary-Elwes' Contract*, [1906] 2 Ch. 143).

Where parties refuse to convey, or do not show title or cannot be found, the purchase money to be deposited.

76. If the owner of any such lands purchased or taken by the promoters of the undertaking, or of any interest therein, on tender of the purchase money or compensation either agreed or awarded to be paid in respect thereof, refuse to accept the same, or neglect or fail to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of the promoters of the undertaking, or if he refuse to convey or release such lands as directed by the promoters of the undertaking, or if any such owner be absent from the kingdom, or cannot after diligent inquiry be found, or fail to appear on the inquiry before a jury, as herein provided for, it shall be lawful for the promoters of the undertaking to deposit the purchase money or compensation payable in respect of such lands, or any interest therein, in the Bank, in the name and with the privity of the Accountant-General of the Court of Chancery* . . . to be placed, except in the cases herein otherwise provided for, to his account there, to the credit of the parties interested in such lands, (describing them, so far as the promoters of the undertaking can do,) subject to the control and disposition of the said court.

Certain words omitted repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

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* Now Paymaster-General: see footnote, *ante*, p. 1204.

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NOTE.

If persons under a disability sell and a title can be made with the consent of others, this is not failure to make a title or refusal to convey if such consent is not obtained (*Re Leeds Grammar School*, [1901] 1 Ch. 228).

Upon deposit being made a receipt to be given, and the lands to vest upon a deed poll being executed.

77. Upon any such deposit of money as last aforesaid being made the cashier of the Bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what and for whose use (described as aforesaid) the same shall have been received, and in respect of what purchase the same shall have been paid in ; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters, or any two of them, containing a description of the lands in respect whereof such deposit shall have been made, and declaring the circumstances under which and the names of the parties to whose credit such deposit shall have been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein ; and thereupon all the estate and interest in such lands of the parties for whose use and in respect whereof such purchase money or compensation shall have been deposited shall vest absolutely in the promoters of the undertaking, and as against such parties they shall be entitled to immediate possession of such lands.

Application of monies so deposited.

78. Upon the application by petition of any party making claim to the money so deposited as last aforesaid, or any part thereof, or to the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same, the said Court of Chancery . . . may, in a summary way, as to such court shall seem fit, order such money to be laid out or invested in the public funds, or may order distribution thereof, or payment of the dividends thereof, according to the respective estates, titles, or interests of the parties making claim to such money or lands, or any part thereof, and may make such other order in the premises as to such court shall seem fit.

Certain words omitted repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

Party in possession to be deemed the owner.

79. If any question arise respecting the title to the lands in respect whereof such monies shall have been so paid or deposited as aforesaid, the parties respectively in possession of such lands, as being the owners thereof, or in receipt of the rents of such lands, as being entitled thereto at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands, until the contrary be shown to the satisfaction of the court ; and unless the contrary be shown as aforesaid the parties so in possession, and all parties claiming under them, or consistently with their possession, shall be deemed entitled to the money so deposited, and to the dividends or interest of the annuities or securities purchased therewith, and the same shall be paid and applied accordingly.

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NOTE.

Where a person was in possession of land of which possession had been taken as a security to pay an annuity during certain lives and the last life had terminated in May, 1895, and the land was taken in 1900 and the money paid into court, the court ordered the dividends to be paid to the person in possession until the expiration of twelve years from the dropping of the last life or until further order (*In re Harris, Ex parte London County Council*, [1901] 1 Ch. 931); and see *In re Harris, Hansler* v. *Harris*, [1909] W. N. 181.

Costs in cases of money deposited.

80. In all cases of monies deposited in the Bank under the provisions of this or the special Act, or an Act incorporated therewith, except where such monies shall have been so deposited by reason of the wilful refusal of any party entitled thereto to receive the same, or to convey or release the lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party to make out a good title to the land required, it shall be lawful for the Court of Chancery . . . to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking; (that is to say,) the costs of the purchase or taking of the lands, or which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for, and the costs of the investment of such monies in Government or real securities, and of the reinvestment thereof in the purchase of other lands, and also the costs of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such monies shall be invested, and for the payment out of court of the principal of such monies, or of the securities whereon the same shall be invested, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants: Provided always, that the costs of one application only for reinvestment in land shall be allowed, unless it shall appear to the Court of Chancery . . . that it is for the benefit of the parties interested in the said monies that the same should be invested in the purchase of lands in different sums and at different times, in which case it shall be lawful for the court, if it think fit, to order the costs of any such investments to be paid by the promoters of the undertaking.

Certain words omitted repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

Where an interim investment in stock has been made of moneys paid into court under the Lands Clauses Act and a person absolutely entitled petitions for payment out, the party who paid the money in must pay the brokerage on the sale of the investments (*Magdalen College, Oxford*, [1901] 2 Ch. 786).

Where the legal estate in lands belonging to a charity, taken by a corporation under the Lands Clauses Act, 1845, is vested in the official trustee of charity lands, he is not bound to receive the purchase money if tendered. His refusal to do so is not "wilful refusal to receive" within the meaning of this section so as to relieve the corporation from the costs of re-investment (*Leeds Grammar School*, [1901] 1 Ch. 228).

Where an interim investment of purchase money paid into court under the Lands Clauses Act, 1845, is made upon railway securities allowed by Order XXII., r. 17, for the investment of cash under the control of the court, the promoters of the undertaking are by virtue of this section liable for the costs of the investment, although the terms of the section apply only to the costs of investment " in Government or real securities " (*In re Gaselee*, [1901] 1 Ch. 923).

Even in the cases excepted by this section the court can give costs and will do so in a proper case, and there is no appeal from the discretion of a judge in so ordering costs (*In re Schmarr*, [1902] 1 Ch. 326).

Where the owner died in Australia after the award, the council were ordered to pay the costs of a power of attorney from the Australian administrator and the costs of a grant of administration in Ireland (*Ex parte Lurgan U. D. C.*, [1902] 1 I. R. 157).

Undertakers under the Lands Clauses Acts having acquired land from the trustees of a charity, such trustees obtained an order for the re-investment of the purchase money in land. They bought land and the contract provided that a lease of the purchased land at a ground rent should be granted by the trustees to their vendors, and that each party should pay their own costs of the lease:—*Held*, that the undertakers were not liable to pay the trustees' costs of the lease as part of the costs of the investment (*Ex parte Thavie's Charity Trustees*, [1905] 1 Ch. 403).

Where the money is invested along with other moneys provided by the applicant, the promoters will be ordered to pay the whole costs of re-investment except so far as they are increased by reason of the purchase money exceeding the moneys deposited (*Re Clark*, [1906] 1 Ch. 615; *Re Metropolitan Rail. Co. and Gonville and Caius College*, [1906] 1 Ch. 619 (n.)); and see *Re Lynn and Fakenham Rail. Act*, [1909] W. N. 24.

The costs of a disentailing deed which is necessary in order to obtain payment of money lodged in court by a railway company, are payable by the company, and a special order will be made as to such costs (*In re Navan and Kingscourt Rail. Co. and Fingall*, [1906] 1 I. R. 557).

Where the purchase money of land taken has under the Lands Clauses Act, 1845, been paid into court and invested in Consols, there is no rule of practice that the court, upon an application for a second interim investment, will impose a condition that is to be treated as a permanent investment, and that the promoters are not to be liable to pay the costs of any future investment (*In re Nepton's Charity* (1906), 22 T. L. R. 442).

Promoters will not have to pay the costs of such parts of the summons as have failed (*Re Jacobs, Baldwin* v. *Prescott*, [1908] 2 Ch. 691).

Where a local authority in pursuance of the compulsory powers conferred upon them by the Lands Clauses Act, 1845, take land belonging to a charity and as a direct result of the taking of such land the trustees of the charity apply to the Charity Commissioners for a new scheme for the regulation of the charity, the costs of the trustees so incurred fall within this section and are payable by the local authority (*In re Wood Green Gospel Hall Charity*, [1909] 1 Ch. 263).

CONVEYANCES.

And with respect to the conveyances of lands, be it enacted as follows:

Form of conveyances.

81. Conveyances of lands to be purchased under the provisions of this or the special Act, or any Act incorporated therewith, may be according to the forms in the Schedules (A.) and (B.) respectively to this Act annexed, or as near thereto as the circumstances of the case will admit, or by deed in any other form which the promoters of the undertaking may think fit; and all conveyances made according to the forms in the said schedules, or as near thereto as the circumstances of the case

Sect. 81. will admit, shall be effectual to vest the lands thereby conveyed in the promoters of the undertaking, and shall operate to merge all terms of years attendant by express declaration, or by construction of law, on the estate or interest so thereby conveyed, and to bar and to destroy all such estates tail, and all other estates, rights, titles, remainders, reversions, limitations, trusts, and interests whatsoever, of and in the lands comprised in such conveyances, which shall have been purchased or compensated for by the consideration therein mentioned; but although terms of years be thereby merged, they shall in equity afford the same protection as if they had been kept on foot, and assigned to a trustee for the promoters of the undertaking to attend the reversion and inheritance.

The purchaser is bound to take a duly executed conveyance (*Re Cary-Elwes' Contract*, [1906] 2 Ch. 143).

Costs of conveyances.

82. The costs of all such conveyances shall be borne by the promoters of the undertaking; and such costs shall include all charges and expenses, incurred on the part as well of the seller as of the purchaser, of all conveyances and assurances of any such lands, and of any outstanding terms or interest therein, and of deducing, evidencing, and verifying the title to such lands, terms, or interests, and of making out and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all other reasonable expenses incident to the investigation, deduction, and verification of such title.

If in order formally to complete a title otherwise good, some act is required by the promoters to be done, which otherwise would not have been necessary, they must pay the costs thereby occasioned (*In re Thames Tunnel (Rotherhithe and Ratcliff) Act*, 1900, [1908] 1 Ch. 493); and see *Ex parte Lurgan U. D. C.*, [1902] 1 I. R. 157; *In re Bear Island Defence Works and Doyle*, [1903] 1 I. R. 164; *In re London United Tramways Act*, 1900, [1906] 1 Ch. 534. This latter case was overruled as to the payment of the lord's fine in the case of copyholds by the Thames Tunnel case, *supra*.

The costs of taking out probate to the estate of a deceased person who had agreed to sell a leasehold interest have been held not to be payable by the promoters (*Re Elementary Education Acts*, 1870 *and* 1873, [1909] 1 Ch. 55).

Taxation of costs of conveyances.

83. If the promoters of the undertaking and the party entitled to any such costs shall not agree as to the amount thereof, such costs shall be taxed by one of the taxing masters of the Court of Chancery . . . upon an order of the same court, to be obtained upon petition in a summary way by either of the parties; and the promoters of the undertaking shall pay what the said master shall certify to be due in respect of such costs to the party entitled thereto, or in default thereof the same may be recovered in the same way as any other costs payable under an order of the said court, or the same may be recovered by distress in the manner hereinbefore provided in other cases of costs; and the expense of taxing such costs shall be borne by the promoters of the undertaking, unless upon such taxation one sixth part of the amount of such costs shall be disallowed, in which case the costs of such taxation shall be borne by the party whose costs shall be so taxed, and the amount thereof shall be ascertained by the said master, and deducted by him accordingly in his certificate of such taxation. **Sect. 83.**

Certain words omitted repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

As to the practice when the promoters purchase by agreement, and there is a special agreement as to paying the vendor's costs, see *Re Middlesex Light Railway Order*, 1903, [1908] W. N. 167.

ENTRY ON LANDS.

And with respect to the entry upon lands by the promoters of the undertaking, be it enacted as follows:

Payment of price to be made previous to entry, except to survey, etc.

84. The promoters of the undertaking shall not, except by consent of the owners and occupiers, enter upon any lands which shall be required to be purchased or permanently used for the purposes and under the powers of this or the special Act, until they shall either have paid to every party having any interest in such lands, or deposited in the Bank, in the manner herein mentioned, the purchase money or compensation agreed or awarded to be paid to such parties respectively for their respective interests therein: Provided always, that for the purpose merely of surveying and taking levels of such lands, and of probing or boring to ascertain the nature of the soil, and of setting out the line of the works, it shall be lawful for the promoters of the undertaking, after giving not less than three nor more than fourteen days notice to the owners or occupiers thereof, to enter upon such lands without previous consent, making compensation for any damage thereby occasioned to the owners or occupiers thereof.

Where the company enter wrongfully, a bill for injunction will lie; or ejectment or trespass may be maintained (*Doe* d. *Hutchinson* v. *Manchester, etc. Rail. Co.* (1845), 14 M. & W. 687). Where the company, under a misapprehension that a tenant for life was owner in fee simple, agreed with him and took possession and constructed their works, on a bill by remaindermen and mortgagees the court restrained the company from retaining possession (*Perks* v. *Wycombe Rail. Co.* (1862), 3 Giff. 662). And see *Marriott* v. *East Grinstead Gas and Water Co.* (1908), 72 J. P. 509.

Where the company, acting *bonâ fide*, made a mistake as to the land taken and began their works, and the question between the company and the landowner was one merely of value, and there had been delay on the part of the landowner, the court refused by injunction to stay the works (*Wood* v. *Charing Cross Rail. Co.* (1863), 33 Beav. 290). And as to mistake regarding whether the land entered upon had been paid for or not, see *Tomlinson* v. *Manchester and Birmingham Rail. Co.* (1840), 2 Rail. Cas. 104.

The landowner should not be guilty of any laches in case of wrongful entry. See *Fooks* v. *Wilts, Somerset, and Weymouth Rail. Co.* (1846), 5 Hare, 199; and see *Doe* d. *Hudson* v. *Leeds and Bradford Rail. Co.* (1851), 16 Q. B. 796.

Sect. 84 does not apply to the case of damage to the property of another consequential upon the exercise of the powers of the company upon their own land (*Hutton* v. *L. & S. W. Rail. Co.* (1849), 7 Hare, 259; and see *Lister* v. *Lobley* (1837), 7 A. & E. 124).

As to when a tenant will be entitled to an injunction under this section, see *Rogers* v. *Kingston-upon-Hull Dock Co.* (1864), 34 L. J. Ch. 165.

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NOTE.

Where the parties proceed under s. 85 the ordinary lien of the landowner for unpaid purchase money is not excluded (*Walker* v. *Ware, Haddam, and Buntingford Rail. Co.* (1865), L. R. 1 Eq. 195).

The corresponding section in the Lands Clauses Consolidation (Scotland) Act is s. 83. See *Glasgow District Subway Co.* v. *Johnstone* (1892), 20 Rettie, 28 (J.C.).

Promoters to be allowed to enter on lands before purchase, on making deposit by way of security and giving bond.

85. Provided also, that if the promoters of the undertaking shall be desirous of entering upon and using any such lands before an agreement shall have been come to or an award made or verdict given for the purchase money or compensation to be paid by them in respect of such lands, it shall be lawful for the promoters of the undertaking to deposit in the Bank by way of security, as hereinafter mentioned, either the amount of purchase money or compensation claimed by any party interested in or entitled to sell and convey such lands, and who shall not consent to such entry, or such a sum as shall, by a surveyor appointed by two justices in the manner hereinbefore provided* in the case of parties who cannot be found, be determined to be the value of such lands, or of the interest therein which such party is entitled to or enabled to sell and convey, and also to give to such party a bond, under the common seal of the promoters if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters, or any two of them, with two sufficient sureties, to be approved of by two justices in case the parties differ, in a penal sum equal to the sum so to be deposited, conditioned for payment to such party, or for deposit in the Bank for the benefit of the parties interested in such lands as the case may require, under the provisions herein contained, of all such purchase money or compensation as may in manner hereinbefore provided be determined to be payable by the promoters of the undertaking in respect of the lands so entered upon, together with interest thereon at the rate of five pounds per centum per annum from the time of entering on such lands until such purchase money or compensation shall be paid to such party or deposited in the Bank for the benefit of the parties interested in such lands, under the provisions herein contained; and upon such deposit by way of security being made as aforesaid, and such bond being delivered or tendered to such non-consenting party as aforesaid, it shall be lawful for the promoters of the undertaking to enter upon and use such lands, without having first paid or deposited the purchase money or compensation in other cases required to be paid or deposited by them before entering upon any lands to be taken by them under the provisions of this or the special Act.

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* See *ante*, s. 59, p. 1192.

Amendment (as to Railway Companies), s. 85 of 8 & 9 Vict. c. 18.

As regards railway companies the section in the text has been amended by the Railway Companies Act, 1867 (30 & 31 Vict. c. 127), s. 36, which provides as follows :

> Where after the passing of this Act a company exercise the powers conferred on the promoters of the undertaking by section eighty-five of the Lands Clauses Consolidation Act, 1845, the following provisions shall have effect :
>
> (1.) The surveyor to be appointed as in that section provided shall be appointed by the Board of Trade instead of by two justices, and all the provisions of that Act relative to a surveyor appointed by two justices shall apply to a surveyor so appointed by the Board of Trade ;
>
> (2.) The company shall give not less than seven days notice of their intention to apply to the Board of Trade for the appointment of a surveyor to any party interested in or entitled to sell and convey the lands in question, and not consenting to the entry of the company :
>
> (3.) The valuation to be made by the surveyor so appointed shall include the amount of compensation for all damage and injury to be sustained by reason of the exercise of the powers conferred by the said section, as far as such damage and injury are capable of estimation :
>
> (4.) The sureties to the bond to be given by the company under that section shall, in case the parties differ, instead of being approved of by two justices, be approved of by the Board of Trade, after hearing the parties.

Vendor's lien.

A vendor of land to a company who have entered upon and used it for the purpose of their undertaking is entitled to the same lien on the land for the unpaid purchase money, and the same remedies for enforcing it, as an ordinary vendor (*Wing* v. *Tottenham and Hampstead Junction Rail. Co.* (1868), L. R. 3 Ch. 740). See *Pell* v. *Northampton, etc. Rail. Co.* (1866), L. R. 2 Ch. 100; *Latimer v. Aylesbury and Buckingham Rail. Co.* (1878), 9 Ch. D. 385; *Allgood* v. *Merrybent and Darlington Rail. Co.* (1886), 33 Ch. D. 571; and *Bygrave* v. *Metropolitan B. of W.* (1886), 32 Ch. D. 147.

Where at the time of filing their bill the plaintiffs were entitled to an injunction against a railway company to restrain them from using their land, damages were awarded at the hearing, although no injunction was in fact obtained, and the plaintiff's interest in the land had meanwhile determined (*M'Rae* v. *L. B. & S. C. Rail. Co.* (1868), 37 L. J. Ch. 267).

Award.

Proceedings under s. 85 are not necessarily invalidated in consequence of the award having been signed on a day subsequent to that on which the money was paid into court and the bond given (*Stamps* v. *Birmingham, etc. Rail. Co.* (1848), 7 Hare, 251).

A surveyor appointed by the Board of Trade having duly made his valuation, the claimants brought an action for an injunction alleging that the valuation was insufficient. An injunction was refused (*River Roden Co., Ltd.* v. *Barking Town U. D. C.*, [1902] 18 T. L. R. 608. An appeal was dismissed, the decision being based entirely upon the effect of certain letters which passed between the plaintiffs' surveyor and the Board of Trade surveyor ([1902] W. N. 103).

Bond.

If the undertakers do not perform the condition of the bond the court has power to order payment of the deposit to the landowner (*In re Mutlow's Estate* (1878), 10 Ch. D. 131).

If the bond given be not in conformity with the requirements of the Act, an injunction will be granted until a proper bond be executed (*Poynder* v. *G. N. Rail Co.* (1847), 2 Phil. 330). If the owners be tenants in common and the bond be made to them jointly it is insufficient (*Langham* v. *G. N. Rail. Co.* (1847), 1 De G. & S. 486); and see *Daubney* v. *Manchester, etc. Rail. Co.* (1847), 10 L. T. (N.S.) 283. Where the bond was to pay the landowner, his executors, etc., "or to deposit in the Bank of England *or otherwise*," the bond was held insufficient in consequence of the introduction of the words "or otherwise" (*Hosking* v. *Phillips* (1848), 3 Exch. 168). See the following other cases turning on the construction of particular expressions in the bond: *Cotter* v. *Metropolitan Rail. Co.* (1864), 12 W. R. 1021; *Dakin* v. *L. & N. W. Rail. Co.* (1849), 3 De G. & S. 414; *Willey* v. *S. E. Rail. Co.* (1849), 1 Mac. & G. 58; *Poynder* v. *G. N. Rail. Co., supra*, and *Langham* v. *G. N. Rail. Co., supra.*

The justices may give their approval of the sureties *ex parte* (*Langham* v. *G. N. Rail. Co.*, *Poynder* v. *G. N. Rail. Co., supra*).

As to the position of equitable mortgagees who were not parties to the inquiry, see *Martin* v. *L. C. & D. Rail Co.* (1866), L. R. 1 Ch. 501.

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NOTE.

The court will consider the production of the bond by the company sufficient *primâ facie* evidence that the conditions of it have been fulfilled (*In re L. & N. W. Rail. Co.* (1872), 26 L. T. (N.S.) 687); and see *Ex parte Midland Rail. Co.*, [1904] 1 Ch. 61.

When the company, having given notice to take part, have been required to take the whole, the deposit and bond should be for the whole (*Dadson* v. *East Kent Rail. Co.* (1859), 7 Jur. (N.S.) 941). See also *Giles* v. *L. C. & D. Rail. Co.* (1861), 1 Dr. & Sm. 406.

A company cannot avail itself of the power of entering on land before purchase unless there is an urgent necessity for immediate entry (*Field* v. *Carnarvon and Llanberis Rail. Co.* (1867), L. R. 5 Eq. 190).

The bond should cover all the land included in the notice (*Barker* v. *North Staffordshire Rail. Co.* (1848), 2 De G. & S. 55).

The bond is not security for compensation in respect of minerals payable under ss. 78—81 of the Railways Clauses Act (*Ex parte Neath and Brecon Rail. Co.* (1876), 2 Ch. D. 201).

Deposit.

When the amount deposited is less than the amount ultimately fixed as the value of the land, the company may be ordered to pay the extra amount forthwith into court (*Ashford* v. *L. C. & D. Rail. Co.* (1866), 14 L. T. (N.S.) 787).

Where by the special Act the company were entitled to acquire compulsorily an easement of tunnelling, unless a jury should determine that such easement would do a material injury to the remainder of the land:—*Held*, that the company were only obliged to deposit the value of the easement (*Hill* v. *Midland Rail. Co.* (1882), 21 Ch. D. 143). *Cf. Clark* v. *London School Board* (1874), L. R. 9 Ch. 120, and *Spencer* v. *Metropolitan B. of W.* (1882), 22 Ch. D. 142.

Where the company have entered upon and taken land under the provisions of s. 85, within the period prescribed for exercising their compulsory powers, their continuance in possession after that period, without making compensation to the owner of the land, does not render their original entry unlawful (*Worsley* v. *South Devon Rail. Co.* (1851), 16 Q. B. 539; *Doe* d. *Armistead* v. *North Staffordshire Rail. Co.* (1851), 16 Q. B. 526). An entry begun wrongfully does not preclude a company continuing in possession when they have done all that was originally required to render their entry rightful (*Willey* v. *S. E. Rail. Co.* (1849), 1 Mac. & G. 58).

A public body having powers for the compulsory purchase of land cannot employ them to acquire land for a purpose which it is not legally competent to carry out; and cannot by proceeding under this section confer upon itself a right which it could not otherwise possess (*Batson* v. *London School Board* (1904), 67 J. P. 457).

Interest.

Where a company have entered on land before the price is settled, the vendor will be entitled to interest on the purchase money from the date of the company's entry, and not merely from the date when the price is fixed (*Rhys* v. *Dare Valley Rail. Co.* (1874), L. R. 19 Eq. 93); but see *In re Eccleshill L. B.* (1879), 13 Ch. D. 365, in which it was held that interest was payable from the date of the verdict, though *de facto* possession of the land was not obtained until a subsequent period. A landowner has no lien or claim for his costs on a fund deposited as security under this section. Under s. 80 there is power to order such costs, but not out of any particular fund (*Ex parte Neath and Brecon Rail. Co.* (1874), L. R. 9 Ch. 263).

Thirteen days before the expiration of their powers, a railway company, having complied with the requirements of s. 85, entered upon land *bonâ fide* required for making the railway, and proceeded to make the railway, the landowner objecting:—*Held*, that whether the railway could or could not have been completed within the thirteen days, the entry was lawful, and the company were entitled to remain and complete the railway (*Tiverton and North Devon Rail. Co.* v. *Loosemore* (1884), 9 App. Cas. 480). A special railway Act

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empowered the Great Western Railway Company to make railways and construct junctions between their lines and the railway of the Midland Company and provided that if the junctions were not completed within five years the powers granted should cease. The Great Western Company made the railways but had not completed the junctions before the end of five years:—*Held*, that there was nothing in the Act to prevent the Great Western Company from completing the junctions by virtue of their ownership of their own land and a power to use the land of the Midland Company (*Midland Rail. Co.* v. *G. W. Rail. Co.*, [1909] A. C. 445). And see *Sparrow* v. *Oxford, etc. Rail. Co.* (1851), 9 Hare, 441.

Capital.

An entry upon land under this section is not a compulsory taking within the meaning of s. 16, and therefore the capital need not have been subscribed (*G. W. Rail. Co.* v. *Swindon, etc. Rail. Co.* (1884), 9 App. Cas. 787); and see *Ford* v. *Plymouth, etc. Rail. Co.*, [1877] W. N. 201.

A railway company, with a view to enter upon lands taken by them for the purposes of their undertaking before the compensation money was fixed, in terms of the Lands Clauses (Scotland) Act, 1845 (8 & 9 Vict. c. 19), deposited in bank by way of security a sum fixed by the valuator, and granted a bond in favour of the owner of the land. The amount of compensation payable was referred to arbiters, and an award was announced by the oversman fixing certain sums as compensation. The company raised an action of reduction of the award on the ground that it was *ultra vires* of the oversman. Thereafter the owner of the land presented a petition to the Lord Ordinary on the Bills praying for a warrant to uplift the consigned money. The court held that, pending the action of reduction, the petitioners were not entitled to payment of the money (*Main* v. *Lanarkshire and Dumbartonshire Rail. Co.* (1895), 22 Rettie, 487).

Upon deposit being made cashier to give receipt.

86. The money so to be deposited as last aforesaid shall be paid into the Bank in the name and with the privity of the Accountant-General of the Court of Chancery * . . . to be placed to his account there to the credit of the parties interested in or entitled to sell and convey the lands so to be entered upon, and who shall not have consented to such entry, subject to the control and disposition of the said court; and upon such deposit being made the cashier of the Bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money specifying therein for what purpose and to whose credit the same shall have been paid in.

Certain words omitted repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

Deposit to remain as a security, and to be applied under the direction of the court.

87. The money so deposited as last aforesaid shall remain in the Bank, by way of security to the parties whose lands shall so have been entered upon for the performance of the condition of the bond to be given by the promoters of the undertaking, as hereinbefore mentioned, and the same may, on the application by petition of the promoters of the undertaking, be ordered to be invested in Bank annuities or Government securities, and accumulated; and upon the condition of such bond being fully performed it shall be lawful for the Court of Chancery, . . . upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to

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* Now Paymaster-General: see footnote, *ante*, p. 1204.

Sect. 87 the promoters of the undertaking, or if such condition shall not be fully performed, it shall be lawful for the said court to order the same to be applied, in such manner as it shall think fit for the benefit of the parties for whose security the same shall so have been deposited.

Certain words omitted repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

Upon the condition of the bond being satisfied the company are entitled to have the deposit returned to them without deduction (*In re L. & S. W. Rail. Co., Ex parte Stevens* (1848), 2 Phil. 772). See also *In re London and Southampton Rail. Co.* (1848), 16 Sim. 165; and *Re Fooks* (1849), 2 Mac. & G. 357.

The court will consider the production of the bond by the company sufficient *primâ facie* evidence that the conditions of it have been fulfilled (*In re L. & N. W. Rail. Co.* (1872), 26 L. T. 687); but where there were a number of persons interested in the land and the bond was given to one only, the court refused to order repayment to the company merely on their showing that the bond was in their possession, but required further evidence that the other persons interested had been paid (*Ex parte Midland Rail. Co.*, [1903] W. N. 99).

Where the transaction goes off, the court will order the deposit to be repaid to the company, and will not order the costs incurred respecting the purchase to be paid out of the fund in court (*Ex parte G. N. Rail. Co.* (1848), 16 Sim. 169). And see further, as to the costs of suit on abandonment of purchase, *Ex parte Birmingham, Wolverhampton and Dudley Rail Co.* (1863), 1 H. & N. 772. And see also *Re Wimbledon and Dorking Rail. Act* (1864), 9 L. T. (N.S.) 703.

Where after paying the deposit the purchase is concluded by contract with the consent of the vendor, the deposit will be returned upon petition of the purchaser, if the consent in writing to the petition be obtained, and without service of the petition on the vendor (*Ex parte Huddersfield Corporation* (1882), 46 L. T. 730; *cf. In re Lancashire and Yorkshire Rail. Co.* (1886), 55 L. T. 58).

The company may pay the deposit money into the Bank by way of security during the time that the office of the Accountant-General is closed.

88. If at any time the company be unable, by reason of the closing of the office of the Accountant-General of the Court of Chancery* . . . to obtain his authority in respect of the payment of any sum of money so authorised to be deposited in the Bank by way of security as aforesaid, it shall be lawful for the company to pay into the Bank to the credit of such party or matter as the case may require (subject nevertheless to being dealt with as hereinafter provided, and not otherwise,) such sum of money as the promoters of the undertaking shall, by some writing signed by their secretary or solicitors for the time being addressed to . . . the Bank in that behalf, request, and upon any such payment being made the cashier of the Bank shall give a certificate thereof; and in every such case, within ten days after the re-opening of the said Accountant-General's office, the solicitor for the promoters of the undertaking shall there bespeak the direction for the payment of such sum into the name of the Accountant-General, and upon production of such direction at the Bank of England the money so previously paid in shall be placed to the credit of the said Accountant-General* accordingly, and the receipt for the said payment be given to the party making the same in the usual way, for the purpose of being filed at the Report Office.

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* Now Paymaster-General: see footnote, *ante*, p. 1204.

Certain words omitted repealed by the Statute Law Revision Act, 1891 (54 & 55 Vict. c. 67), and the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19), respectively.

Penalty on the promoters of the undertaking entering upon lands without consent before payment of the purchase-money.

89. If the promoters of the undertaking or any of their contractors shall, except as aforesaid, wilfully enter upon and take possession of any lands which shall be required to be purchased or permanently used for the purposes of the special Act, without such consent as aforesaid, or without having made such payment for the benefit of the parties interested in the lands or such deposit by way of security as aforesaid, the promoters of the undertaking shall forfeit to the party in possession of such lands the sum of ten pounds, over and above the amount of any damage done to such lands by reason of such entry and taking possession as aforesaid, such penalty and damage respectively to be recovered before two justices; and if the promoters of the undertaking or their contractors shall, after conviction in such penalty as aforesaid, continue in unlawful possession of any such lands, the promoters of the undertaking shall be liable to forfeit the sum of twenty-five pounds for every day they or their contractors shall so remain in possession as aforesaid, such penalty to be recoverable by the party in possession of such lands, with costs, by action in any of the superior courts: Provided always, that nothing herein contained shall be held to subject the promoters of the undertaking to the payment of any such penalties as aforesaid, if they shall bonâ fide and without collusion have paid the compensation agreed or awarded to be paid in respect of the said lands to any person whom the promoters of the undertaking may have reasonably believed to be entitled thereto, or shall have deposited the same in the Bank for the benefit of the parties interested in the lands, or made such deposit by way of security in respect thereof as hereinbefore mentioned, although such person may not have been legally entitled thereto.

See *Hutchinson* v. *Manchester, Bury, etc. Rail. Co.* (1846), 15 M. & W. 314.

As to where the company have obtained the consent of some but not of all joint owners before entry, see *Langford* v. *Brighton, Lewes, and Hastings Rail. Co.* (1845), 4 Rail. Cas. 69; *Fooks* v. *Wilts, Somerset, etc. Rail. Co.* (1846), 5 Hare, 199.

Under the corresponding section (87) of the Lands Clauses Consolidation (Scotland) Act, 1845, it was held that the penalties might be recovered by tenants for a year or for a shorter term, as well as by owners or tenants on long leases (*Glasgow District Subway Co.* v. *Johnstone* (1892), 20 Rettie (Justiciary Cases), 28).

Decision of justices not conclusive as to the right of the promoters.

90. On the trial of any action for any such penalty as aforesaid the decision of the justices under the provision hereinbefore contained shall not be held conclusive as to the right of entry on any such lands by the promoters of the undertaking.

Proceedings in case of

91. If in any case in which, according to the provisions of this or the special Act, or any Act incorporated therewith, the promoters of the

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refusal to deliver possession of lands.

undertaking are authorised to enter upon and take possession of any lands required for the purposes of the undertaking, the owner or occupier of any such lands or any other person refuse to give up the possession thereof, or hinder the promoters of the undertaking from entering upon or taking possession of the same, it shall be lawful for the promoters of the undertaking to issue their warrant to the sheriff to deliver possession of the same to the person appointed in such warrant to receive the same, and upon the receipt of such warrant the sheriff shall deliver possession of any such lands accordingly; and the costs accruing by reason of the issuing and execution of such warrant, to be settled by the sheriff, shall be paid by the person refusing to give possession; and the amount of such costs shall be deducted and retained by the promoters of the undertaking from the compensation, if any, then payable by them to such party, or if no such compensation be payable to such party, or if the same be less than the amount of such costs then such costs, or the excess thereof beyond such compensation, if not paid on demand, shall be levied by distress, and upon application to any justice for that purpose he shall issue his warrant accordingly.

A few days before the expiration of the three years limited for the compulsory purchase of land, a railway company served on a landowner a notice to treat for part of his land. A correspondence ensued, no agreement was come to, and the compensation was not assessed. Thirteen days before the expiration of the five years limited for the making and completing of the railways, the company, having complied with the requirements of s. 85, entered and proceeded to make the railway, the landowner objecting and resisting. The land was *bonâ fide* required for the railway:—*Held*, reversing the decision of the Court of Appeal, that whether the railway could or could not have been completed within the thirteen days, the entry under s. 85 was lawful; that the company could not be restrained by injunction, but were entitled to remain and complete the railway after the expiration of the five years (*Tiverton and North Devon Rail. Co.* v. *Loosemore* (1884), 9 App. Cas. 480; and see *Midland Rail. Co.* v. *G. W. Rail. Co.*, *ante*, p. 1217).

Parties not to be required to sell part of a house.

92. And be it enacted, that no party shall at any time be required to sell or convey to the promoters of the undertaking a part only of any house or other building or manufactory, if such party be willing and able to sell and convey the whole thereof.

House or other building or manufactory.

The word "house" must be read in the general, if not universal, sense in which the law understands it (*Grosvenor* v. *Hampstead Junction Rail. Co.* (1857), 1 De G. & J. 446; *Richards* v. *Swansea Tramways, etc. Co.* (1878), 9 Ch. D. 425). It comprises all that would pass by the grant of a messuage, which includes not only the curtilage but also the garden and all that is necessary to the enjoyment of the house, if within one ambit, whether attached to the main building or not, and though purchased subsequently to the erection of the main building (*Governors of St. Thomas's Hospital* v. *Charing Cross Rail. Co.* (1861), 1 John. & H. 400). The words "house or other building or manufactory" refer to three distinct things; and it is sufficient that the owner of premises, part of which is required to be taken, should specify the premises which he requires them to take without stating whether he makes the claim on the ground that they are a "house" or a "building," or a "manufactory" (*Richards* v. *Swansea Tramways, etc. Co.*, *supra*).

Garden and summer-house.

See *Cole* v. *West London, etc. Rail. Co.* (1859), 27 Beav. 242 (cutting off the end of a garden and a summer house); *King* v. *Wycombe Rail. Co.* (1860),

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28 Beav. 104 (taking part of the orchard and a corner of the garden); *Alexander* v. *West End of London, etc. Rail. Co.* (1862), 30 Beav. 556 (taking a portion of land intended to be attached to three houses then in course of being built, although the uncompleted houses had been allowed to fall into a state of great dilapidation); *Hewson* v. *L. & S. W. Rail. Co.* (1860), 8 W. R. 467 (taking the furthest of a series of gardens); *Marson* v. *L. C. & D. Rail. Co.* (1869), L. R. 7 Eq. 546 (taking a small portion of a vacant piece of land said to be the curtilage of a public-house); *cf. Falkner* v. *Somerset and Dorset Rail. Co.* (1873), L. R. 16 Eq. 458; and *Chambers* v. *L. C. & D. Rail. Co.* (1863), 8 L. T. (N.S.) 235.

Manufactory.

As to manufactories, see *Sparrow* v. *Oxford, Worcester, etc. Rail. Co.* (1852), 2 De G. M. & G. 94; *Barker* v. *North Staffordshire Rail. Co.* (1848), 2 De G. & S. 55; *Reddin* v. *Metropolitan B. of W.* (1862), 10 W. R. 726; *Furniss* v. *Midland Rail. Co.* (1868), L. R. 6 Eq. 473; and *Spackman* v. *G. W. Rail. Co.* (1855), 1 Jur. (N.S.) 790. The company are bound to take the trade fixtures in a manufactory as well as the building itself (*Gibson* v. *Hammersmith Rail. Co.* (1863), 32 L. J. Ch. 337). B. & Sons, tea merchants, carried on their business at P. House, and also in houses in G. Street, in the immediate vicinity. In the houses in G. Street the tea was stored, blended, and milled, and by those and similar processes special teas of a distinct quality were produced and sold in the market under B. & Son's trade mark. In P. House the packing requisites were prepared and made, and the tea packed, and thence it was delivered to customers. The Metropolitan Board of Works desired to take P. House under their compulsory powers :—*Held*, that manufacture meant producing something new from raw material, which was not the case here; but that, even supposing a manufacture was carried on at G. Street, there was no manufacture carried on at P. House, and as the business and manufacture were carried on in distinct premises, it was not incumbent on the board to take the premises as a whole. Consequently B. & Sons were not entitled to an injunction restraining the Board from taking P. House without taking the whole (*Benington* v. *Metropolitan B. of W.* (1886), 54 L. T. 837). Part of a building was used as a manufactory, and the other part was let to an under-tenant, and not used for the purposes of the manufactory. Nevertheless, the latter part was held to be part of a manufactory within the meaning of this section (*Brook* v. *M. S. & L. Rail. Co.*, [1895] 2 Ch. 571).

Public road separating.

As to where a public road separates a garden or field from the house, see *Fergusson* v. *L. B. & S. C. Rail. Co.* (1863), 33 Beav. 105; *Steele* v. *Midland Rail. Co.* (1866), L. R. 1 Ch. 275; *Salter* v. *Metropolitan District Rail. Co.* (1870), L. R. 9 Eq. 432. In *Spackman* v. *G. W. Rail. Co.* (1855), 1 Jur. (N.S.) 790, a road separated certain cottages used as warehouses from a manufactory, and the company were not allowed to take the cottages without taking the whole manufactory.

Private road.

For a case in which part of a private road forming the approaches to a house and grounds was taken compulsorily, and the case was held not to be within s. 92, see *Allhusen* v. *Ealing and South Harrow Rail. Co.* (1898), 78 L. T. 396.

Ha-ha.

A field separated from the garden of the house by a ha-ha traversed by a gravel walk leading to a coachman's house at the further end, and used occasionally for purposes of pleasure (as archery and dancing), though chiefly as pasture for cows, was held not to be part of the house within s. 92 (*Pulling* v. *L. C. & D. Rail. Co.* (1864), 3 De G. J. & S. 661). See also *Barnes* v. *Southsea Rail. Co.* (1884), 27 Ch. D. 536. Two semi-detached villas, though with one continuous roof, are not one building, and a company giving notice to treat for one cannot be compelled to take both under this section (*Harvie* v. *South Devon Rail. Co.* (1874), 32 L. T. (N.S.) 1). But where two houses adjoined, having internal communication, and were used as one, though held upon separate leases from the same landlord, it was held that the company could not compulsorily take the house comprised in one lease without the other (*Siegenberg* v. *Metropolitan District Rail. Co.* (1883), 32 W. R. 333); *cf. Falkner* v. *Somerset and Dorset Rail. Co., supra.*

Paddock.

A paddock near a house used for keeping fowls and growing fruit was held to be part of the house within s. 92 (*Low* v. *Staines Reservoirs Committee*

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(1900), 16 T. L. R. 184). See also *Barnes* v. *Southsea Rail. Co.*, cited on p. 1221.

Counter-notice.

A landowner having received notice to treat for the sale of a part of his premises does not, by offering to sell that part at a price named by him, preclude himself, if the company decline the offer, from requiring them to take the whole under s. 92. The proper construction of that section is, that a landowner shall not be compelled to sell a part of his house, etc., if before the company have begun to put their compulsory powers in motion he gives them notice to take the whole (*Gardner* v. *Charing Cross Rail. Co.* (1861), 2 John. & H. 248). See also *Lavers* v. *London County Council* (1905), 69 J. P. 362; and *Pollard* v. *Middlesex County Council* (1907), 71 J. P. 85.

A railway company having served notice to treat for the purchase of a certain property, a counter-notice, under s. 92, was given requiring the company to take certain other property as well as that comprised in the notice to treat. The solicitors of the company wrote accepting the counter-notice, but the company afterwards insisted on their right to take only the property comprised in the notice to treat. It having been found as a fact that the properties were separate and distinct, and that therefore the counter-notice was bad, it was held that the acceptance of the bad counter-notice by the solicitors could not bind the company to take land which they were not otherwise compellable to take (*Treadwell* v. *L. & S. W. Rail. Co.* (1884), 54 L. J. Ch. 565).

T. was the owner of two adjoining villas, called E. Villa and W. Villa. Behind E. there was a garden, and at the back of the garden was a strip of land which had been thrown into the garden of W. The defendants gave T. notice to treat in respect of E. and a strip of land at the back which formed part of the garden of W. T. then gave a counter-notice requiring the defendants to take the whole of W. Thereupon the defendants gave notice abandoning their notice to treat; but T. said he was entitled to treat the notice given by the defendants as applicable to E. without the strip of land at the back, and his arbitrator proceeded *ex parte* to assess the compensation in respect of E. In an action by T. to recover the amount awarded by the arbitrator, T. contended that he was entitled to consider the notice to treat given by the defendants as equivalent to two notices, a notice in respect of E., and a notice in respect of that part of W. which was behind E., and that the notice by the defendants abandoning their notice to treat had reference only to the latter, leaving T. the right to have compensation awarded as to the former:—*Held*, by MATHEW, J., after consideration, that there was only one notice to treat, and that T. was not entitled to treat the notice as two notices applicable to E. and part of W.; that the award was therefore not binding on the defendants; and that T. was not entitled to recover (*Thompson* v. *Tottenham and Forest Gate Rail. Co.* (1892), 67 L. T. 416).

What is part of house.

The plaintiff in the year 1853 acquired land on the north side of a road, on which he built a residence for his own occupation. In the year 1864 he acquired a plot of land on the south side of the same road immediately opposite his residence, whereon he built stables and formed a kitchen garden, and this property had since been continuously occupied by him as an adjunct to his residence. The defendants gave notice to exercise their compulsory powers in respect of the stables and garden only:—*Held*, that the property included in the notice was not part of the plaintiff's "house" within s. 92 of the Act, and the defendants could not be compelled to take the plaintiff's residence itself. *Quære*, whether under such circumstances a piece of land detached from a residence may not be part of the "house" within the meaning of the section (*Kerford* v. *Seacombe, etc. Rail. Co.* (1888), 57 L. J. Ch. 270).

The owner of a property consisting of a strip of land about 100 yards long by thirty yards wide, with a road at each end, containing front garden, house, back garden and paddock, the latter abutting on the back road, and with private roads from the house to the front road, and from the house along the side of the paddock to the back road, received notice from a railway company of their intention to take the whole of the end of the paddock and private road, so as to cut him off from the back road:—*Held*, that the paddock was part of the house within s. 92 (*Barnes* v. *Southsea Rail. Co.* (1884), 27 Ch. D. 536).

Company cannot be compelled to take whole.

But although the landowner cannot be compelled to sell part only of a house, etc., the company cannot be compelled to take the whole (*R.* v. *L. & S. W. Rail. Co.* (1848), 12 Q. B. 775; *Grierson* v. *Cheshire Lines Committee* (1874), L. R. 19 Eq. 83). And see *Thompson* v. *Hammersmith Borough Council*, [1906] 1 Ch. 299.

Where a notice to take part of land was given, and a counter-notice was given requiring the whole to be taken, and the undertakers thereupon withdrew their original notice to treat, but afterwards served a second notice to treat in respect of the same land, it was held that the second notice was good (*Ashton Vale Iron Co.* v. *Bristol Corporation*, [1901] 1 Ch. 591). *Cf. Glasgow Corporation* v. *McLaughlin* (1900), 8 S. L. T. 198.

Where a local authority are taking a house, let in several floors, for the purpose of widening a street under s. 80 of Michael Angelo Taylor's Act the owner of the ground floor is not absolutely and in all circumstances entitled to restrain them from taking more than the part to be thrown into the street. If for any reason such as danger or excessive cost of severance, it is in fact essential for the local authority to acquire the whole building, an adjudication to that effect is not vitiated by a prior agreement to resell the surplus portion of the ground floor subject to the owner's right of preemption (*Piscod* v. *Westminster Corporation*, [1905] 2 Ch. 475); and see *Denman & Co.* v. *Westminster Corporation*, [1906] 1 Ch. 464.

Power to take part only where no material detriment.

Parliament has of late years very frequently conferred on railway and other undertakers a special power authorising them, notwithstanding s. 92, to take a portion of defined houses or other buildings or manufactories scheduled in their Act, without being obliged to take the remainder if the portion taken can, in the opinion of the authority to whom the question of disputed compensation shall be submitted, be severed from the remainder of the property without material detriment thereto. (See INTRODUCTION).

A railway company having such special powers gave to the plaintiffs the usual notice to treat for a portion of the premises occupied by them as a confectionery manufactory. The plaintiffs gave a counter-notice requiring the company to take the whole. The company issued a warrant to the sheriff to summon a jury to determine the amount of compensation to be paid by them for the portion comprised in their original notice. The plaintiffs gave the company notice that they should raise the question whether that portion could be severed without material detriment to the property. A dispute having arisen whether in this state of things the company would be bound to take the whole if the jury decided against them on the question of severance, the plaintiffs brought an action and moved for an injunction to restrain the company from proceeding further on their warrant, unless and until they should have consented to take the whole of the property if the jury decided the portion could not be severed without material detriment:—*Held*, that the company could not be deprived of their right, if the jury decided against them, to abandon their notice to treat altogether, but that the warrant should have raised two issues: (1) whether the portion could be severed without serious detriment to the property; (2) if so, the amount of compensation to be paid by the company including damages for severance (*Morrison* v. *G. E. Rail. Co.* (1885), 53 L. T. 384).

Another railway company having such special powers gave notice to treat for a portion of certain property, and, before the arbitrator appointed under the Lands Clauses Consolidation Act to assess compensation, they undertook to provide access to the remainder of the property by means of a right-of-way over the portion taken. On a case stated by the arbitrator in his award:—*Held*, that the arbitrator was entitled, in determining whether there would be "material detriment" to the remainder of the property arising from the taking of a portion, to take into consideration all the circumstances of the case, including the sufficiency of the proposed access:—*Held*, also, that as the

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giving the proposed right of way over the lands of the company was not inconsistent with the purpose for which the lands were taken, the company had power to grant it (*In re Gonty and M. S. & L. Rail. Co.*, [1896] 2 Q. B. 439).

A railway company were entitled by a section in their special Act, notwithstanding s. 90 of the Lands Clauses Consolidation (Scotland) Act, 1845 (8 & 9 Vict. c. 19), to take a portion of certain houses or other buildings or manufactories scheduled in their Act without being obliged to take the remainder, if the portion taken could, in the opinion of the authority to whom the question of disputed compensation should be submitted, be severed from the remainder of the property without material detriment thereto. The company gave notice to treat for 232 square yards, a portion of the scheduled property, which formed an access used jointly by the respondents and another firm. The respondents required the railway company to take the whole of their property. A statutory submission to arbitration containing the question, whether or not the portion of land containing the 232 square yards could be severed from the remainder of the property of the respondents without material detriment, reserving only the question whether s. 90 applied, was entered into. Before the arbitrator the railway company offered to allow access to the remainder of the respondent's property under a bridge over the portion taken. The arbitrator found that the portion 232 square yards could not be severed without material detriment to the remainder of the respondent's preperty, and awarded compensation upon the assumption that the company were bound to take the whole premises. In an action to recover the amount awarded :—*Held* (distinguishing *Gonty's Case, supra*), affirming the judgment of the Second Division of the Court of Session, that whether the arbitrator was right or wrong in declining to take the offer of the company into consideration in assessing the compensation, his award, until set aside by a proper process, was binding on the court, and could not be reviewed (*Caledonian Rail. Co.* v. *Turcan*, [1898] A. C. 256).

INTERSECTED LANDS.

And with respect to small portions of intersected land, be it enacted as follows:

Owners of intersected lands may insist on sale.

93. If any lands, not being situate in a town or built upon, shall be so cut through and divided by the works as to leave, either on both sides or on one side thereof, a less quantity of land than half a statute acre, and if the owner of such small parcel of land require the promoters of the undertaking to purchase the same along with the other land required for the purposes of the special Act, the promoters of the undertaking shall purchase the same accordingly, unless the owner thereof have other land adjoining to that so left into which the same can be thrown, so as to be conveniently occupied therewith ; and if such owner have any other land so adjoining, the promoters of the undertaking shall, if so required by the owner, at their own expense, throw the piece of land so left into such adjoining land, by removing the fences and levelling the sites thereof, and by soiling the same in a sufficient and workmanlike manner.

It was held in *Carington* v. *Wycombe Rail. Co.* (1868), L. R. 3 Ch. 377, that "lands situate within a town" within the meaning of s. 128 mean lands surrounded by the buildings which constitute the town. *Cf. Elliot* v. *South Devon Rail. Co.* (1848), 2 Ex. 725.

Promoters of the undertaking may

94. If any such land shall be so cut through and divided as to leave on either side of the works a piece of land of less extent than half a insist on purchase where expense of bridges, etc., exceeds the value.

statute acre, or of less value than the expense of making a bridge, culvert, or some other communication between the land so divided as the promoters of the undertaking are, under the provisions of this or the special Act, or any Act incorporated therewith, compellable to make, and if the owner of such lands have not other lands adjoining such piece of land, and require the promoters of the undertaking to make such communication, then the promoters of the undertaking may require such owner to sell to them such piece of land; and any dispute as to the value of such piece of land, or as to what would be the expense of making such communication, shall be ascertained as herein provided for cases of disputed compensation; and on the occasion of ascertaining the value of the land required to be taken for the purposes of the works, the jury or the arbitrators, as the case may be, shall, if required by either party, ascertain by their verdict or award the value of any such severed piece of land, and also what would be the expense of making such communication.

See *Cobb* v. *Mid-Wales Rail. Co.*, cited in notes to s. 51, *ante*, p. 1190; and see *R.* v. *Brown* (1867), L. R. 2 Q. B. 630.

COPYHOLDS.

And with respect to copyhold lands, be it enacted follows:

Conveyances of copyhold lands to be enrolled.

95. Every conveyance to the promoters of the undertaking of any lands which shall be of copyhold or customary tenure, or of the nature thereof, shall be entered on the rolls of the manor of which the same shall be held or parcel; and on payment to the steward of such manor of such fees as would be due to him on the surrender of the same lands to the use of a purchaser thereof he shall make such enrolment; and every such conveyance, when so enrolled, shall have the like effect, in respect of such copyhold or customary lands, as if the same had been of freehold tenure, nevertheless, until such lands shall have been enfranchised by virtue of the powers hereinafter contained, they shall continue subject to the same fines, rents, heriots, and services as were theretofore payable and of right accustomed.

Copyhold lands to be enfranchised.

96. Within three months after the enrolment of the conveyance of any such copyhold or customary lands, or within one month after the promoters of the undertaking shall enter upon and make use of the same for the purposes of the works, whichever shall first happen, or if more than one parcel of such lands holden of the same manor shall have been taken by them, then within one month after the last of such parcels shall have been so taken or entered on by them, the promoters of the undertaking shall procure the whole of the lands holden of such manor so taken by them to be enfranchised, and for that purpose shall apply to the lord of the manor whereof such lands are holden to enfranchise the same, and shall pay to him such compensation in respect thereof as shall be agreed upon between them and him, and if the parties fail to agree respecting the amount of the compensation to be paid for such enfranchisement the same shall be determined as in other cases of disputed

Sect. 96. compensation; and in estimating such compensation the loss in respect of the fines, heriots, and other services payable on death, descent, or alienation, or any other matters which would be lost by the vesting of such copyhold or customary lands in the promoters of the undertaking, or by the enfranchisement of the same, shall be allowed for.

In 1873, a railway company took copyhold land for the purposes of its undertaking and erected cottages and works thereon. In November, 1875, a deed of conveyance by the copyholder, under s. 95, was entered on the court rolls. No steps having been taken by the company to obtain enfranchisement, the lord, in 1887, required the company to enfranchise and pay him compensation. By the custom of the manor a fine of two years' improved annual value was payable on the death of lord or tenant, and a fine of three years' improved annual value on alienation:—*Held*, by STIRLING, J., that the compensation was to be assessed according to the annual value of the land as improved by the company's works:—*Held*, by the Court of Appeal, that as under ss. 96, 97, an obligation on the company to procure enfranchisement and an obligation on the lord to enfranchise, arose at the expiration of one month from the entry by the company, or of three months from the enrolment of the conveyance, whichever should first happen, the compensation must be assessed as at that period, without regard to the subsequent improvements made by the company; but that the lord was entitled to the fines which had become payable after that period, and before steps had been taken for enfranchisement, such fines being assessed according to the improved annual value of the land (*Lowther* v. *Caledonian Rail. Co.*, [1892] 1 Ch. 73). And see *Lord Leconfield* v. *L. & N. W. Rail. Co. and Furness Rail. Co.* (1907), 1 Ch. 38.

Certain copyhold land was, under the powers of the Burial Acts and this Act purchased from the copyhold tenants by the local authority, and the conveyance was duly enrolled on the court rolls of the manor. The local authority entered into possession, and negotiations proceeded between the lord of the manor and the local authority as to the amount of compensation payable to the lord under this section. It was agreed to refer the matter to an arbitrator, and meanwhile the lord remained in possession of all manorial rights, and all rents were paid to him. The lord claimed compensation for, among other things, the loss of quittances and also interest upon the compensation money from the date of the obligation to enfranchise to payment:—*Held*, that the lord was entitled under this section to loss from quittances and to interest upon the compensation money at the rate of 4 per cent. per annum, deducting therefrom the amount of the rents received by him (*In re Duke of Northumberland and Tynemouth Corporation*, [1909] 2 K. B. 374).

Copyhold land having been taken by a corporation under the powers of the Lands Clauses Act, and a draft conveyance from the copyholder being in the course of settlement, the corporation applied to the lord of the manor under s. 96, for enfranchisement upon certain terms, which were agreed to. In settling the draft enfranchisement deed, the corporation claimed to have, from the lord and his trustee to uses, an acknowledgment of the right of the corporation to production of the documents of title to the manor, and of the court rolls, relating to the hereditaments enfranchised, and to delivery of copies thereof, and, also from both, an undertaking for the safe custody of the same:—*Held*, that the corporation were entitled to no more than an acknowledgment by the lord and his trustee of the right of the corporation to the production of the documents of title to the manor, and of the court rolls, so far as they related to the hereditaments enfranchised, and to delivery of copies thereof; and an undertaking by the lord alone for safe custody. Whether the corporation were entitled to so much as the above, *quære* (*In re Agg-Gardner* (1884), 25 Ch. D. 600).

Lord of the manor to

97. Upon payment or tender of the compensation so agreed upon or determined, or on deposit thereof in the bank in any of the cases hereinbefore in that behalf provided, the lord of the manor whereof such copyhold or customary lands shall be holden, shall enfranchise such lands, and the lands so enfranchised shall for ever thereafter be held in free and common socage; and in default of such enfranchisement by the lord of the manor, or if he fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided, in the case of the purchase of lands by them, and thereupon the lands in respect of the enfranchisement whereof such compensation shall have been deposited as aforesaid shall be deemed to be enfranchised, and shall be for ever thereafter held in free and common socage.

enfranchise on payment of compensation.

Apportionment of copyhold rents.

98. If any such copyhold or customary lands be subject to any customary or other rent, and part only of the land subject to any such rent be required to be taken for the purposes of the special Act, the apportionment of such rent may be settled by agreement between the owner of the lands and the lord of the manor on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement, then the same shall be settled by two justices; and the enfranchisement of any copyhold or customary lands taken by virtue of this or the special Act, or the apportionment of such rents, shall not affect in other respects any custom by or under which any such copyhold or customary lands not taken for such purposes shall be held; and if any of the lands so required be released from any portion of the rents to which they were subject jointly with any other lands, such last mentioned lands shall be charged with the remainder only of such rents; and with reference to any such apportioned rents, the lord of the manor shall have all the same rights and remedies over the lands to which such apportioned rent shall have been assigned or attributed as he had previously over the whole of the lands subject to such rents for the whole of such rents.

COMMON LANDS.

And with respect to any such lands being common or waste lands, be it enacted as follows:

Compensation for common lands, where held of a manor, etc., how to be paid.

99. The compensation in respect of the right in the soil of any lands subject to any rights of common shall be paid to the lord of the manor, in case he shall be entitled to the same, or to such party, other than the commoners, as shall be entitled to such right in the soil; and the compensation in respect of all other commonable and other rights in or over such lands, including therein any commonable or other rights to which the lord of the manor may be entitled, other than his right in the soil of such lands, shall be determined and paid and applied in manner hereinafter provided with respect to common lands the right in the soil of which shall belong to the commoners; and upon

Sect. 99. payment or deposit in the bank of the compensation so determined all such commonable and other rights shall cease and be extinguished.

Under ss. 99—107, if a railway company take possession, by virtue of their Act, of land over which there are rights of common, after payment to the lord of the manor of compensation in respect of his ownership in the soil and a conveyance by him to the company, and they construct their railway on the land without having first paid compensation to the commoners in respect of their rights of common, a commoner may maintain an action against the company for the disturbance of his rights of common (*Stoneham* v. *L. B. & S. C. Rail. Co.* (1871), L. R. 7 Q. B. 1).

The occupiers of lands under the copyholders of a manor claimed, and by a byelaw passed by the homage, were declared entitled to certain rights of common over the lands of the manor. Part of the lands had been sold to a railway company, and the occupiers claimed to share in the purchase-money:—*Held*, that the claim could not be maintained; that it could only be made by custom, by grant, or by prescription; that there could be no such custom giving a *profit à prendre in alieno solo;* that there was no grant, and that there could be no right by prescription inasmuch as the claim would be against the owner of the land in respect of which the claim was made (*Austin* v. *Amhurst* (1877), 7 Ch. D. 689).

Lord of the manor, etc., to convey to the promoters of the undertaking, on receiving compensation for his interest.

100. Upon payment or tender to the lord of the manor, or such other party as aforesaid, of the compensation which shall have been agreed upon or determined in respect of the right in the soil of any such lands, or on deposit thereof in the bank in any of the cases hereinbefore in that behalf provided, such lord of the manor, or such other party as aforesaid, shall convey such lands to the promoters of the undertaking, and such conveyance shall have the effect of vesting such lands in the promoters of the undertaking, in like manner as if such lord of the manor, or such other party as aforesaid, had been seised in fee simple of such lands at the time of executing such conveyance; and in default of such conveyance it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect whereof such last-mentioned compensation shall have been deposited as aforesaid shall vest absolutely in the promoters of the undertaking, and they shall be entitled to immediate possession thereof, subject nevertheless to the commonable and other rights theretofore affecting the same, until such rights shall have been extinguished by payment or deposit of the compensation for the same in manner hereinafter provided.

See *Attorney-General* v. *Meyrick*, [1893] A. C. 1.

Compensation for common lands, where not held of a manor, how to be ascertained.

101. The compensation to be paid with respect to any such lands, being common lands, or in the nature thereof, the right to the soil of which shall belong to the commoners, as well as the compensation to be paid for the commonable and other rights in or over common lands the right in the soil whereof shall not belong to the commoners, other than the compensation to the lord of the manor, or other party entitled to the soil thereof, in respect of his right in the soil thereof, shall be determined by agreement between the promoters of the undertaking and a committee of the parties entitled to commonable or other rights in such lands, to be appointed as next hereinafter mentioned.

A meeting of the parties interested to be convened.

102. It shall be lawful for the promoters of the undertaking to convene a meeting of the parties entitled to commonable or other rights over or in such lands to be held at some convenient place in the neighbourhood of the lands, for the purpose of their appointing a committee to treat with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable or other rights; and every such meeting shall be called by public advertisement, to be inserted once at least in two consecutive weeks in some newspaper circulating in the county or in the respective counties and in the neighbourhood in which such lands shall be situate, the last of such insertions being not more than fourteen nor less than seven days prior to any such meeting; and notice of such meeting shall also, not less than seven days previous to the holding thereof, be affixed upon the door of the parish church where such meeting is intended to be held, or if there be no such church some other place in the neighbourhood to which notices are usually affixed; and if such lands be parcel or holden of a manor, a like notice shall be given to the lord of such manor.

See *Nash* v. *Coombs* (1868), L. R. 6 Eq. 51.

See as to the persons who are entitled to attend the meeting, *Richards* v. *De Winton, Richards* v. *Evans*, [1901] 2 Ch. 566; on appeal, [1903] 1 Ch. 507.

Meeting to appoint a committee.

103. It shall be lawful for the meeting so called to appoint a committee, not exceeding five in number, of the parties entitled to any such rights; and at such meeting the decision of the majority of the persons entitled to commonable rights present shall bind the minority and all absent parties.

Committee to agree with the promoters of the undertaking.

104. It shall be lawful for the committee so chosen to enter into an agreement with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable and other rights, and all matters relating thereto, for and on behalf of themselves and all other parties interested therein; and all such parties shall be bound by such agreement; and it shall be lawful for such committee to receive the compensation so agreed to be paid, and the receipt of such committee, or of any three of them, for such compensation shall be an effectual discharge for the same; and such compensation, when received, shall be apportioned by the committee among the several persons interested therein, according to their respective interests, but the promoters of the undertaking shall not be bound to see to the apportionment or to the application of such compensation, nor shall they be liable for the misapplication or non-application thereof.

See further hereon 17 & 18 Vict. c. 97, ss. 15—20; 45 Vict. c. 15; and see *Fox* v. *Amhurst* (1875), L. R. 29 Eq. 403; *Richards* v. *De Winton, Richards* v. *Evans, supra.*

Disputes to be settled as in other cases.

105. If upon such committee being appointed they shall fail to agree with the promoters of the undertaking as to the amount of the compensation to be paid as aforesaid, the same shall be determined as in other cases of disputed compensation.

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If no committee be appointed, the amount to be determined by a surveyor.

106. If, upon being duly convened by the promoters of the undertaking, no effectual meeting of the parties entitled to such commonable or other rights shall take place or if, taking place, such meeting fail to appoint such committee, the amount of such compensation shall be determined by the surveyor, to be appointed by two justices, as hereinbefore provided in the case of parties who cannot be found.

This and the five preceding sections (101—105) are not so peremptory as to exclude the right to have specific performance of an agreement entered into otherwise than as provided by these sections (*Bee* v. *Stafford and Uttoxeter Rail. Co.* (1875), 23 W. R. 863).

Upon payment of compensation payable to commoners the lands to vest.

107. Upon payment or tender to such committee, or any three of them, or if there shall be no such committee then upon deposit in the bank in the manner provided in the like case of the compensation which shall have been agreed upon or determined in respect of such commonable or other rights, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect of which such compensation shall have been so paid or deposited shall vest in the promoters of the undertaking freed and discharged from all such commonable or other rights, and they shall be entitled to immediate possession thereof; and it shall be lawful for the Court of Chancery . . . by an order to be made upon petition, to order payment of the money so deposited to a committee to be appointed as aforesaid, or to make such other order in respect thereto, for the benefit of the parties interested, as it shall think fit.

Certain words omitted are repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

As to a commoner's rights against a company who have proceeded with works on land over which he has rights before compensating him, see *Stoneham* v. *L. B. & S. C. Rail. Co.* (1871), L. R. 7 Q. B. 1.

LANDS IN MORTGAGE.

And with respect to lands subject to mortgage, be it enacted as follows:

Power to redeem mortgages.

108. It shall be lawful for the promoters of the undertaking to purchase or redeem the interest of the mortgagee of any such lands which may be required for the purposes of the special Act, and that whether they shall have previously purchased the equity of redemption of such lands or not, and whether the mortgagee thereof be entitled thereto in his own right or in trust for any other party, and whether he be in possession of such lands by virtue of such mortgage or not, and whether such mortgage affect such lands solely, or jointly with any other lands not required for the purposes of the special Act; and in order thereto the promoters of the undertaking may pay or tender to such mortgagee the principal and interest due on such mortgage, together with his costs and charges, if any, and also six months' additional interest, and thereupon such mortgagee shall immediately convey his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct; or the promoters of the undertaking may give notice in writing to such mortgagee that they will pay off the principal and interest due on such mortgage at the end of six months, computed from the day of giving such notice; and if they shall have given any such notice, or if the party entitled to the equity of redemption of any such lands shall have given six months notice of his intention to redeem the same, then at the expiration of either of such notices, or at any intermediate period, upon payment or tender by the promoters of the undertaking to the mortgagee of the principal money due on such mortgage, and the interest which would become due at the end of six months from the time of giving either of such notices, together with his costs and expenses, if any, such mortgagee shall convey or release his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct.

See *Martin* v. *L. C. & D. Rail. Co.* (1866), L. R. 1 Ch. 501.

Deposit of mortgage money on refusal to accept.

109. If, in either of the cases aforesaid, upon such payment or tender any mortgagee shall fail to convey or release his interest in such mortgage as directed by the promoters of the undertaking, or if he fail to adduce a good title thereto to their satisfaction, then it shall be lawful for the promoters of the undertaking to deposit in the bank, in the manner provided by this Act in like cases, the principal and interest, together with the costs, if any, due on such mortgage, and also, if such payment be made before the expiration of six months' notice as aforesaid, such further interest as would at that time become due; and it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon, as well as upon such conveyance by the mortgagee, if any such be made, all the estate and interest of such mortgagee, and of all persons in trust for him, or for whom he may be a trustee, in such lands, shall vest in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession.

Sum to be paid when mortgage exceeds the value of the lands.

110. If any such mortgaged lands shall be of less value than the principal, interest, and costs secured thereon, the value of such lands, or the compensation to be made by the promoters of the undertaking in respect thereof, shall be settled by agreement between the mortgagee of such lands and the party entitled to the equity of redemption thereof on the one part, and the promoters of the undertaking on the other part; and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to the mortgagee, in satisfaction of his mortgage debt, so far as the same will extend; and upon payment or tender thereof the mortgagee shall convey or release all his interest in such mortgaged lands to the promoters of the undertaking, or as they shall direct.

Deposit of money when refused on tender.

111. If upon such payment or tender as aforesaid being made any such mortgagee fail so to convey his interest in such mortgage, or to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such value or compensation in the bank, in the manner provided by this Act in like cases; and every such payment or deposit shall be accepted by the mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of such mortgaged lands from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon such lands, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, shall become absolutely vested in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession; nevertheless, all rights and remedies possessed by the mortgagee against the mortgagor, by virtue of any bond or covenant or other obligation, other than the right to such lands, shall remain in force in respect of so much of the mortgage debt as shall not have been satisfied by such payment or deposit.

Sum to be paid where part only of mortgaged lands taken.

112. If a part only of any such mortgaged lands be required for the purposes of the special Act, and if the part so required be of less value than the principal money, interest, and costs secured on such lands, and the mortgagee shall not consider the remaining part of such lands a sufficient security for the money charged thereon, or be not willing to release the part so required, then the value of such part, and also the compensation (if any) to be paid in respect of the severance thereof or otherwise, shall be settled by agreement between the mortgagee and the party entitled to the equity of redemption of such land on the one part, and the promoters of the undertaking on the other; and if the parties aforesaid fail to agree respecting the amount of such value or compensation the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to such mortgagee in satisfaction of his mortgage debt, so far as the same will extend; and thereupon such mortgagee shall convey or release to them, or as they shall direct, all his interest in such mortgaged lands the value whereof shall have been so paid; and a memorandum of what shall have been so paid shall be endorsed on the deed creating such mortgage, and shall be signed by the mortgagee; and a copy of such memorandum shall at the same time (if required) be furnished by the promoters of the undertaking, at their expense, to the party entitled to the equity of redemption of the lands comprised in such mortgage deed.

Deposit of money when refused on tender.

113. If upon payment or tender to any such mortgagee of the amount of the value or compensation so agreed upon or determined such mortgagee shall fail to convey or release to the promoters of the under-

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taking, or as they shall direct, his interest in the lands in respect of which such compensation shall so have been paid or tendered, or if he shall fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for the promoters of the undertaking to pay the amount of such value or compensation into the bank, in the manner provided by this Act in the case of moneys required to be deposited in such bank; and such payment or deposit shall be accepted by such mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of the portion of the mortgaged lands so required from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon such lands shall become absolutely vested in the promoters of the undertaking, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, and in case such mortgagee were himself entitled to such possession they shall be entitled to immediate possession thereof; nevertheless every such mortgagee shall have the same powers and remedies for recovering or compelling payment of the mortgage money, or the residue thereof (as the case may be), and the interest thereof respectively, upon and out of the residue of such mortgaged lands, or the portion thereof not required for the purposes of the special Act, as he would otherwise have had or been entitled to for recovering or compelling payment thereof upon or out of the whole of the lands originally comprised in such mortgage.

Compensation to be made in certain cases if mortgage paid off before the stipulated time.

114. Provided always, that in any of the cases hereinbefore provided with respect to lands subject to mortgage, if in the mortgage deed a time shall have been limited for payment of the principal money thereby secured, and under the provisions hereinbefore contained the mortgagee shall have been required to accept payment of his mortgage money, or of part therof, at a time earlier than the time so limited, the promoters of the undertaking shall pay to such mortgagee, in addition to the sum which shall have been so paid off, all such costs and expenses as shall be incurred by such mortgagee in respect of or which shall be incidental to the re-investment of the sum so paid off, such costs, in case of difference, to be taxed, and payment thereof enforced, in the manner herein provided with respect to the costs of conveyances; and if the rate of interest secured by such mortgage be higher than at the time of the same being so paid off can reasonably be expected to be obtained on re-investing the same, regard being had to the then current rate of interest, such mortgagee shall be entitled to receive from the promoters of the undertaking, in addition to the principal and interest hereinbefore provided for, compensation in respect of the loss to be sustained by him by reason of his mortgage money being so prematurely paid off the amount of such compensation to be ascertained, in case of difference, as in other cases of disputed compensation; and until payment or tender of such compensation as aforesaid the promoters

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See *Rankin* v. *East and West India Docks, etc. Rail. Co.* (1840), 12 Beav. 298.

RENTCHARGES.

And with respect to lands charged with any rent service, rentcharge, or chief or other rent, or other payment or incumbrance not hereinbefore provided for, be it enacted as follows:

Release of lands from rentcharges.

115. If any difference shall arise between the promoters of the undertaking and the party entitled to any such charge upon any lands required to be taken for the purposes of the special Act, respecting the consideration to be paid for the release of such lands therefrom, or from the portion thereof affecting the lands required for the purposes of the special Act, the same shall be determined as in other cases of disputed compensation.

Release of part of lands from charge.

116. If part only of the lands charged with any such rent service, rentcharge, chief or other rent, payment, or incumbrance, be required to be taken for the purposes of the special Act, the apportionment of any such charge may be settled by agreement between the party entitled to such charge and the owner of the lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement the same shall be settled by two justices; but if the remaining part of the lands so jointly subject be a sufficient security for such charge, then, with consent of the owner of the lands so jointly subject, it shall be lawful for the party entitled to such charge to release therefrom the lands required, on condition or in consideration of such other lands remaining exclusively subject to the whole thereof.

Deposit in case of refusal to release.

117. Upon payment or tender of the compensation so agreed upon or determined to the party entitled to any such charge as aforesaid, such party shall execute to the promoters of the undertaking a release of such charge; and if he fail so to do, or if he fail to adduce good title to such charge, to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such compensation in the bank in the manner hereinbefore provided in like cases, and also, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the rent service, rentcharge, chief or other rent, payment or incumbrance, or the portion thereof in respect whereof such compensation shall so have been paid, shall cease and be extinguished.

Charge to continue on lands not taken.

118. If any such lands be so released from any such charge or incumbrance, or portion thereof, to which they were subject jointly with other lands, such last-mentioned lands shall alone be charged

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with the whole of such charge, or with the remainder thereof, as the case may be, and the party entitled to the charge shall have all the same rights and remedies over such last-mentioned lands, for the whole or for the remainder of the charge, as the case may be, as he had previously over the whole of the lands subject to such charge; and if upon any such charge or portion of charge being so released the deed or instrument creating or transferring such charge be tendered to the promoters of the undertaking for the purpose, they or two of them shall subscribe, or if they be a corporation shall affix their common seal to a memorandum of such release endorsed on such deed or instrument, declaring what part of the lands originally subject to such charge shall have been purchased by virtue of the special Act, and if the lands be released from part of such charge, what proportion of such charge shall have been released, and how much thereof continues payable, or if the lands so required shall have been released from the whole of such charge, then that the remaining lands are thenceforward to remain exclusively charged therewith; and such memorandum shall be made and executed at the expense of the promoters of the undertaking, and shall be evidence in all courts and elsewhere of the facts therein stated, but not so as to exclude any other evidence of the same facts.

LEASES.

And with respect to lands subject to leases, be it enacted as follows:

Where part only of lands under lease taken, the rent to be apportioned.

119. If any lands shall be comprised in a lease for a term of years unexpired, part only of which lands shall be required for the purposes of the special Act, the rent payable in respect of the lands comprised in such lease shall be apportioned between the lands so required and the residue of such lands; and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement between the parties such apportionment shall be settled by two justices; and after such apportionment the lessee of such lands shall, as to all future accruing rent, be liable only to so much of the rent as shall be so apportioned in respect of the lands not required for the purposes of the special Act; and as to the lands not so required, and as against the lessee, the lessor shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease; and all the covenants, conditions, and agreements of such lease, except as to the amount of rent to be paid, shall remain in force with regard to that part of land which shall not be required for the purposes of the special Act, in the same manner as they would have done in case such part only of the land had been included in the lease.

Where a railway company serves a notice under this Act on a lessee to take land held under a lease containing a proviso against assignment

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without the license of the lessor, the necessity for such license is taken away by the operation of the Act; and where a portion of the land comprised in such a lease is taken, the lessee is not bound to procure the lessor's consent to the agreement with the company for the apportionment of the rent (*Slipper* v. *Tottenham and Hampstead Junction Rail. Co.* (1867), L. R. 4 Eq. 112). And see *In re Way and London United Tramways Co., Ltd.* (1908), 125 L. T. Jo. 594, *supra*, p. 1199.

A portion of lands in the occupation of a statutory tenant was required by the Secretary of State for War for the purpose of the Defence Acts. Notice to treat was given, and the rent was apportioned by agreement as provided by this section:—*Held*, that the apportioned rent only was payable from the date of the agreement, although no entry had taken place (*The Secretary of State for War and Hurley's Contract*, [1904] 1 I. R. 354.

Tenants to be compensated.

120. Every such lessee as last aforesaid shall be entitled to receive from the promoters of the undertaking compensation for the damage done to him in his tenancy by reason of the severance of the lands required from those not required or otherwise by reason of the execution of the works.

Compensation to be made to tenants at will, etc.

121. If any such lands shall be in the possession of any person having no greater interest therein than as tenant for a year or from year to year, and if such person be required to give up possession of any lands so occupied by him before the expiration of his term or interest therein, he shall be entitled to compensation for the value of his unexpired term or interest in such lands, and for any just allowance which ought to be made to him by an incoming tenant, and for any loss or injury he may sustain, or if a part only of such lands be required, compensation for the damage done to him in his tenancy by severing the lands held by him, or otherwise injuriously affecting the same; and the amount of such compensation shall be determined by two justices, in case the parties differ about the same; and upon payment or tender of the amount of such compensation all such persons shall respectively deliver up to the promoters of the undertaking, or to the person appointed by them to take possession thereof, any such lands in their possession required forthe purposes of the special Act.

Under the above section, the justices have no jurisdiction to inquire into the title of the claimant to his alleged interest; but in determining the amount of compensation the justices have jurisdiction, and are bound, to inquire whether the claimant has been required to give up possession of the land before the expiration of his term or interest, that being a condition precedent to the right to compensation under the section (*G. N. & City Rail. Co.* v. *Tillett*, [1902] 1 K. B. 874).

A tenant of premises under an agreement for a lease for the residue of a term of seventeen years, though at law a mere tenant from year to year, is not "a person having no greater interest therein than as tenant for a year, or from year to year" (*Sweetman* v. *Metropolitan Rail. Co.* (1863), 1 Hem. & M. 543). So a tenant who had a verbal agreement with his landlord, under which he was to hold for any term he wished, not exceeding his landlord's own interest, has been held entitled to a right in equity to have that agreement acted on, and, therefore, is not merely a tenant from year to year (*In re King's Leasehold Estates* (1873), L. R. 16 Eq. 521).

A tenant for a term of which less than a year has yet to run is within this section, and not within s. 68 (*R.* v. *G. N. Rail. Co.* (1876), 2 Q. B. D. 151). See also *Ferguson* v. *Hood* (1881), L. R. 9 R. 168; 19 S. L. R. 145.

When a tenant from year to year has received legal notice to quit he is not entitled to compensation (*Ex parte Merrett, Re Portsmouth Rail. Co.* (1860), 2 L. T. (N.S.) 471; and see also *R.* v. *London and Southampton Rail. Co.* (1839), 10 A. & E. 3).

A right for directors to use a board room for certain purposes at certain times, and for a clerk to use a desk in an office for certain purposes, does not constitute a tenancy so as to entitle the company to recover compensation for disturbance under the Lands Clauses Acts (*Municipal Freehold Land Co.* v. *Metropolitan and District Railways Joint Committee* (1883), 1 C. & E. 184).

A schoolmaster to whom was assigned a residence which he was bound to keep in repair, and whose appointment was determinable by three months' notice on either side, the office to be vacated only on June 21st or December 21st, was held to have no greater interest in the house than as tenant for a year or from year to year (*R.* v. *M. S. & L. Rail. Co.* (1854), 4 E. & B. 88).

Where no part of the lands of a tenant from year to year are taken by a railway company, but his interest in the lands is injuriously affected by the railway works, he is entitled to claim compensation, and to have it determined under s. 68 before a jury or arbitrators; and his case does not come within s. 121 (*R.* v. *Sheriff of Middlesex, In re Somers and Metropolitan Rail. Co.* (1862), 31 L. J. Q. B. 261).

In considering whether the case of any tenant is within this section, his interest at the time the notice to treat is given by the company, and not at its expiration, is to be looked to (*Tyson* v. *London Corporation* (1871), L. R. 7 C. P. 18). On May 14th, 1891, a railway company, empowered by statute to make compulsory purchase of certain lands, served the lessee of part of such lands with notice to treat. At that time the lessee held under a thirty years' lease, which was terminable by the lessor under certain conditions by three months' notice. No further steps were taken by either party under the notice to treat; and on June 30th, 1892, the lessor gave the lessee notice to terminate the tenancy at the expiration of three months. On July 20th the railway company required and took possession of the land under s. 85 of the Lands Clauses Act, and took out a summons to determine the amount of compensation due to the lessee before a metropolitan magistrate under s. 121. The magistrate considered that he had no jurisdiction to entertain the matter, on the ground that the value of the interest of the lessee in the land must be considered at the date of the notice to treat, and not at the date at which the land was actually required and taken:—*Held*, that since no proceedings had been taken under the notice to treat the fact that it had been given was immaterial, and that the magistrate had therefore jurisdiction under s. 121 to determine the amount of compensation (*R.* v. *Kennedy*, [1893] 1 Q. B. 533).

A railway company, with compulsory powers for the purchase of land gave to a lessee notice to treat in respect of a part of the land held by him under a thirty years' lease made in 1889, and determinable as to the whole or any part of the premises by the lessor by three months' notice. Subsequently the lessor gave the lessee a three months' notice to determine the tenancy of that part of the land which was comprised in the notice to treat, and during the currency of the three months' notice the company took possession of such part of the land under s. 85 of the Lands Clauses Consolidation Act, 1845. The compensation payable to the lessee was subsequently assessed by a metropolitan police magistrate upon a summons under s. 121:—*Held*, that, assuming that the lessee was entitled to compensation for damage sustained by him during the residue of his term of thirty years in respect of the remainder of the land held by him, the magistrate had no jurisdiction, by virtue of s. 121, to assess such compensation, which could only be assessed by arbitration or a jury under s. 68 of the Act, and that he had only jurisdiction to assess compensation for the value of the lessee's interest in the land taken, and for damage sustained by him by severing or

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otherwise injuriously affecting the remainder of his land during the continuance of the term of three months for which the land taken was held (*Bexley Heath Rail. Co.* v. *North*, [1894] 2 Q. B. 579).

Under a local Act incorporating s. 121, the defendants, in November, 1865, served upon the plaintiff, who held certain premises as yearly tenant, a notice stating their intention to take the premises, and requiring possession in six months. In fact, possession was not taken by the defendants until 1867, and the plaintiff meanwhile remained in possession, and continued to carry on his business on the premises. In January, 1867, the defendants took an assignment of the interest of plaintiff's landlord (the lessee for a term of the premises), but no landlord's notice to quit was ever given to the plaintiff. In February, 1867, the defendants demanded immediate possession of the plaintiff's premises, declining to pay any compensation, and upon refusal obtained possession under a provision of their local Act, which, however, required that no such possession should be taken until payment or deposit of purchase or compensation money should have been made. The plaintiff having sued them in trespass:—*Held* (affirming the judgment of the Court of Exchequer), that the plaintiff was entitled to compensation, and that the defendants had, therefore, not complied with the provisions of their local Act, and were liable in this action (*Cranwell* v. *London Corporation* (1870), L. R. 5 Ex. 284).

A tenant whose tenancy is created after the company has served a notice to treat on the owner is not entitled to compensation (*Re Marylebone* (*Stingo Lane*) *Improvement Act, Ex parte Edwards* (1871), L. R. 12 Eq. 389).

Sect. 121 applies only to cases where the tenant has been required to give up possession of his land, and a notice to treat under s. 18 is not equivalent to requiring possession (*R.* v. *Stone* (1866), L. R. 1 Q. B. 529).

Where notice under s. 121 was served on a publican, and he claimed to include in his compensation a sum for loss of trade owing to neighbouring houses having been pulled down by the company, this was held not to be the subject of compensation (*R.* v. *Vaughan and the Metropolitan District Rail. Co.* (1868), L. R. 4 Q. B. 190).

The plaintiffs, a volunteer corps, obtained leases of several pieces of ground on which they formed a rifle range and erected butts. Beyond the butts was marsh land, in the occupation of A., and beyond that some marsh meadows. In order to provide for the safe passage of bullets passing beyond the butts, the plaintiffs obtained a lease of the marsh meadows; but as to A.'s land, they could only obtain a verbal agreement, under which they paid A. £49 per annum as an agreed commuted payment or compensation for any injury done to the cattle on the land in the course of the shooting, and it was open to either party to discontinue the arrangement at any time on giving a proper notice. The defendants, a gas company, took compulsorily part of the meadows leased to the plaintiffs for the formation of a road to their works, and the formation of this road rendered it impossible to use the rifle range. Proceedings were taken under the Lands Clauses Act, before a jury, to assess the compensation to the plaintiffs for the land taken by defendants, and for the severance and otherwise injuriously affecting the other land of the plaintiffs. Under the latter head they claimed compensation for the stoppage of the rifle range. The jury, under s. 49, assessed compensation under both heads. The defendants disputed their liability to pay the latter sum on the ground that there had been no actual severance of the land taken from the rifle range, by reason of the plaintiffs having only a precarious interest over A.'s land:—*Held*, that the plaintiffs were entitled to this head of compensation and that the fact that plaintiffs had only a precarious right of shooting over A.'s land only went to the quantum of compensation which the jury might think right to award (*Holt* v. *Gaslight and Coke Co.* (1872), L. R. 7 Q. B. 728).

The adjudication of two justices under s. 22 of the Lands Clauses Act as to the value of an interest in land required for the execution of an undertaking within that Act, in respect to which no agreement has been come to between the promoters and the party entitled to sell as to the value thereof, is not an order for the payment of money within 11 & 12 Vict. c. 43, s. 11 (Jervis's Act); and the summons to hear and determine such question of compensation is not out of time if issued after six months from the notice to treat given by the promoters of the undertaking (*R.* v. *Hannay* (1874), 44 L. J. M. C. 27; and see *R.* v. *Edwards* (1884), 13 Q. B. D. 586, overruling *Re Edmundson* (1851), 17 Q. B. 67).

For cases turning on the London City Improvement Act, 1847 (10 & 11 Vict. c. cclxxx.), and the Holborn Valley Improvement Act, 1864 (27 & 28 Vict. c. lxi.), and the Holborn Valley Improvement Additional Works Act, 1867 (30 & 31 Vict. c. lv.), see *R.* v. *London Corporation* (1867), L. R. 2 Q. B. 292, and *Tyson* v. *London Corporation* (1871), L. R. 7 C. P. 18; and for a case under the Artizans and Labourers Dwellings Improvement Act, 1875, see *Wilkins* v. *Birmingham Corporation* (1883), 25 Ch. D. 78. This Act of 1875 has been repealed and superseded by the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), and the Acts amending the same.

The section in the Lands Clauses Consolidation (Scotland) Act, 1845 corresponding to that in the text is s. 114. The Scotch Courts have decided that the claim of the yearly tenant must be determined by the sheriff under s. 114, and not by arbitration, whether the claim is on account of lands injuriously affected or is on account of lands taken (*Caledonian Rail. Co.* v. *Barr* (1855), Ct. of Sess. Cas., 17 Dunlop, 312; *Glasgow District Subway Co.* v. *Albin* (1895), Ct. of Sess. Cas., 23 Rettie, 81).

Where greater interest claimed than from year to year, lease to be produced.

122. If any party, having a greater interest than as tenant at will, claim compensation in respect of any unexpired term or interest under any lease or grant of any such lands, the promoters of the undertaking may require such party to produce the lease or grant in respect of which such claim shall be made, or the best evidence thereof in his power, and if, after demand made in writing by the promoters of the undertaking, such lease or grant, or such best evidence thereof, be not produced within twenty-one days, the party so claiming compensation shall be considered as a tenant holding only from year to year, and be entitled to compensation accordingly.

A railway company gave notice to an agricultural tenant that they intended to take part of his farm under the Lands Clauses Consolidation (Scotland) Act, 1845, and that they required him to state his claim for compensation, and that they were willing to treat with him in regard to it, and at the same time demanded that if he claimed compensation under an unexpired lease he should produce the lease or other evidence along with his claim within twenty-one days, and that failing his doing so, he would be considered as a tenant from year to year in terms of s. 115 (the section in the Scotch Act corresponding to s. 122 in the text):—*Held*, that the railway company was not entitled under s. 115 to demand production of the lease until a claim for compensation had been made by the tenant (*Forfar and Brechin Rail. Co.* v. *Bell* (1892), Ct. of Sess. Cas., 19 Rettie, 786).

Limit of time for compulsory purchase.

123. And be it enacted, that the powers of the promoters of the undertaking for the compulsory purchase or taking of lands for the purposes of the special Act shall not be exercised after the expiration of the prescribed period, and if no period be prescribed, not after the expiration of three years from the passing of the special Act.

In computing the three years, the day of the passing of the Act must be excluded (*Goldsmiths' Co.* v. *West Metropolitan Rail. Co.*, [1904] 1 K. B. 1).

As to what is a "special Act" within the meaning of this section, see *Hill* v. *Haire*, [1899] 1 Ir. R. 87.

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If the notice to treat be given within the period limited, the steps necessary to complete the purchase may be taken after the expiration of such period (*Marquis of Salisbury* v. *G. N. Rail. Co.* (1852), 17 Q. B. 840; and see *Sparrow* v. *Oxford, etc. Rail. Co.* (1852), 2 De G. M. & G. 94; *Doe* d. *Armistead* v. *North Staffordshire Rail. Co.* (1851), 16 Q. B. 526).

A landowner sold certain land to a railway company, the purchase to be completed in six weeks, and it was agreed that if the company should "require any additional land of the vendor adjoining or near the land sold, for the purposes of the railway and works, the same should be taken and paid for by the company" at a certain price per acre:—*Held*, that this agreement authorised the company to take adjoining land for the purpose of their works at any time before the period limited by their Act for the completion of their works, and that though their compulsory powers had expired, they could acquire land under the agreement for the purpose of forming a new public footpath in substitution for an old one (*Rangeley* v. *Midland Rail. Co.* (1868), L. R. 3 Ch. 306).

See *Tiverton and North Devon Rail. Co.* v. *Loosemore* (1884), 9 App. Cas. 480, cited more fully, *ante*, pp. 1216, 1220; and see *Midland Rail. Co.* v. *G. W. Rail. Co.*, [1908] 2 Ch. 644, affirmed in the House of Lords, [1909] A. C. 445, and *supra*, p. 1220.

When Parliament authorises the construction of public works the language employed is usually permissive, and not compulsory, and for that reason *mandamus* will not lie to compel the construction of such works (*York and North Midland Rail. Co.* v. *R.* (1853), 1 E. & B. 858; and *G. W. Rail. Co.* v. *R.* (1853), 1 E. & B. 874). Both these cases were decided in the Exchequer Chamber. See also *R.* v. *French* (1879), 4 Q. B. D. 507; *Forbes* v. *Lee Conservancy Board* (1879), 4 Ex. D. 116; *S. E. Rail. Co.* v. *Railway Commissioners* (1881), 6 Q. B. D. 586; and *Julius* v. *Bishop of Oxford* (1880), 5 App. Cas. 14.

INTERESTS OMITTED TO BE PURCHASED.

And with respect to interests in lands which have by mistake been omitted to be purchased, be it enacted as follows:

Promoters of the undertaking empowered to purchase interests in lands, the purchase whereof may have been omitted by mistake.

124. If at any time after the promoters of the undertaking shall have entered upon any lands which under the provisions of this or the special Act, or any Act incorporated therewith, they were authorised to purchase, and which shall be permanently required for the purposes of the special Act, any party shall appear to be entitled to any estate, right, or interest in or charge affecting such lands which the promoters of the undertaking shall through mistake or inadvertence have failed or omitted duly to purchase or to pay compensation for, then, whether the period allowed for the purchase of lands shall have expired or not, the promoters of the undertaking shall remain in the undisturbed possession of such lands, provided within six months after notice of such estate, right, interest, or charge, in case the same shall not be disputed by the promoters of the undertaking, or in case the same shall be disputed then within six months after the right thereto shall have been finally established by law in favour of the party claiming the same, the promoters of the undertaking shall purchase or pay compensation for the same, and shall also pay to such party, or to any other party who may establish a right thereto, full compensation for the mesne profits or interest which would have accrued to such parties respectively in respect thereof during the interval between the entry of the promoters of the undertaking thereon and the time of the payment of such purchase money or compensation by the promoters of the undertaking, so far as such mesne profits or interest may be recoverable in law or equity; and such purchase money or compensation shall be agreed on or awarded and paid in like manner as according to the provisions of this Act, the same respectively would have been agreed on or awarded and paid in case the promoters of the undertaking had purchased such estate, right, interest, or charge before their entering upon such land, or as near thereto as circumstances will admit.

As to the meaning of the words "six months after the right thereto shall have been finally established by law in favour of the party claiming the same," see *Caledonian Rail. Co.* v. *Davidson*, [1903] A. C. 22.

As to what amounts to "mistake or inadvertence," see *Hyde* v. *Manchester Corporation* (1852), 5 De G. & Sm. 249; *Webster* v. *S. E. Rail. Co.* (1851), 20 L. J. Ch. 194; *Martin* v. *L. C. & D. Rail. Co.* (1866), L. R. 1 Ch. 501; *Stretton* v. *G. W. Rail. Co.* (1870), L. R. 5 Ch. 751; *Thomas* v. *Barry Dock and Rail. Co.* (1889), 5 T. L. R. 360; and *Cardwell* v. *Midland Rail. Co.* (1904), 21 T. L. R. 23; and *cf. Omagh U. D. C.* v. *Henderson* (1907), 2 I. R. 310.

It has been held that the corresponding section (117) of the Scottish Act does not apply to cases in which the promoters did not, prior to the expiration of the period allowed for compulsory purchase, intend to acquire the omitted estate, right, interest or charge (*Davidson's Trustees* v. *Caledonian Rail. Co.* (1894), 21 Rettie, 1060).

How value of such lands to be estimated.

125. In estimating the compensation to be given for any such last-mentioned lands, or any estate or interest in the same, or for any mesne profits thereof, the jury, or arbitrators, or justices, as the case may be, shall assess the same according to what they shall find to have been the value of such lands, estate or interest, and profits, at the time such lands were entered upon by the promoters of the undertaking, and without regard to any improvements or works made in the said lands by the promoters of the undertaking, and as though the works had not been constructed.

Promoters of the undertaking to pay the costs of litigation as to such lands.

126. In addition to the said purchase money, compensation, or satisfaction, and before the promoters of the undertaking shall become absolutely entitled to any such estate, interest, or charge, or to have the same merged or extinguished for their benefit, they shall, when the right to any such estate, interest, or charge shall have been disputed by the company, and determined in favour of the party claiming the same, pay the full costs and expenses of any proceedings at law or in equity for the determination or recovery of the same to the parties with whom any such litigation in respect thereof shall have taken place; and such costs and expenses shall, in case the same shall be disputed, be settled by the proper officer of the court in which such litigation took place.

By the expression "full costs and expenses" is meant costs as between solicitor and client, and not as between party and party (*Hyde* v. *Manchester Corporation* (1852), 12 C. B. 474). See also *Jamieson* v. *Trevelyan* (1855), 10 Ex. 748; and *Younger* v. *North British Rail. Co.* (1888), 15 Rettie, 32 (H. L.).

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SALE OF SUPERFLUOUS LANDS.

And with respect to lands acquired by the promoters of the undertaking under the provisions of this or the special Act, or any Act incorporated therewith, but which shall not be required for the purposes thereof, be it enacted as follows:

Lands not wanted to be sold, or in default to vest in owners of adjoining lands.

127. Within the prescribed period, or if no period be prescribed within ten years after the expiration of the time limited by the special Act for the completion of the works, the promoters of the undertaking shall absolutely sell and dispose of all such superfluous lands, and apply the purchase money arising from such sales to the purposes of the special Act; and in default thereof all such superfluous lands remaining unsold at the expiration of such period shall thereupon vest in and become the property of the owners of the lands adjoining thereto, in proportion to the extent of their lands respectively adjoining the same.

This section is not incorporated with the Public Health Act, 1875, although the rest of the Lands Clauses Act is. For the reason, see notes to s. 175 of the Act of 1875, *ante*, p. 876.

In s. 127, the word "required" does not mean *demanded* but *necessary*, and when it ceases to be necessary this land becomes superfluous land. It may be so in any one of four ways: if more land had been taken than, on the execution of the works, appeared to be needed; if the company had been forced to take it by reason of not being able to obtain a part of any property without taking the rest; if taken for works then deemed to be required for permanent use, but which afterwards were found not to be required, and were therefore abandoned; or, if taken only for a temporary purpose, when that temporary purpose had been answered. The conversion of it to other purposes than those of the undertaking is evidence of its being superfluous. Though land acquired for the purposes of the undertaking has been actually used by the promoters, if that use is only one of a temporary nature, the land having satisfied that use becomes superfluous land. Where land cannot be shown to be required for the purposes of the undertaking it vests absolutely in the adjoining owner under s. 127. Having so become "vested" in the adjoining owners, it is not affected by the circumstance that a private Act, passed afterwards, though before it is claimed by an adjoining owner, extends the time within which the directors may dispose of the superfluous lands belonging to the company (*G. W. Rail. Co.* v. *May* (1874), L. R. 7 H. L. 283). To the same effect is *Moody* v. *L. B. & S. C. Rail. Co.* (1866), 1 B. & S. 290. *S. C. sub nom. Moody* v. *Corbett* (1866), L. R. 1 Q. B. 510, and see *North British Rail. Co.* v. *Moon's Trustees* (1879), 6 R. 640, and *Stewart* v. *Highland Rail. Co.* (1889), 16 R. 580.

Where under compulsory powers a company acquire land *bonâ fide* for the special purposes of their Act, and the special purposes afterwards fail, the vendor's right of re-purchase is entirely dependent upon ss. 127, 128, and no immediate right of re-purchase arises within the ten years limited by the Act. Though a person having an inchoate right of pre-emption under the above sections may apply to restrain by injunction damage to the property, he is not entitled to prevent all use of the land during the ten years; and where a railway company, after abandoning their undertaking, were applying to Parliament for fresh powers of constructing another railway upon the land purchased for the purposes of the abandoned undertaking, the court allowed a demurrer to a Bill by the vendor to restrain the execution of railway works upon such land, the plaintiff not alleging any special damage (*Astley* v. *M. S. & L. Rail. Co.* (1858), 27 L. J. Ch. 299). The expression "dispose of" in the sections in question, means the transfer of the land to other persons and not the application of them to a different purpose from that for which they were originally obtained (*S. C.* on appeal, 2 De G. & J. 453).

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A railway company, having the usual powers under their special Act to take and use land for the purposes of the railway and works, cannot, whether for valuable consideration or otherwise, alienate any portion of its land, not being superfluous land within s. 127, for any purpose except the purposes of the Act. Where a railway station is on arches on land thus taken, the part of the land under the arches is not superfluous land (*Mulliner* v. *Midland Rail. Co.* (1879), 11 Ch. D. 611; *G. W. Rail. Co.* v. *Solihull R. D. C.* (1902), 86 L. T. 852; *L. & Y. Rail. Co.* v. *Davenport* (1906), 70 J. P. 129). And where a railway company excavated the soil, constructed their line, and then built an arch over it and replaced the surface over the arch, it was held that they were not authorised to sell the vacant space over the arch as "superfluous land." Superfluous land must be separated by a vertical and not by a horizontal boundary from the land required by the company (*In re Metropolitan District Rail. Co. and Cosh* (1880), 13 Ch. D. 607. *Cf. Midland Rail. Co.* v. *Wright*, [1901] 1 Ch. 738, and *In re Lancashire and Yorkshire Rail. Co. and Earl of Derby's Contract* (1909), 100 L. T. 44.

Where there are several adjoining properties in contact with the superfluous land, it is to be divided among the owners of the adjoining properties in proportion to the frontage of each; meaning by frontage what would be the length of the line of contact of each property if the line were made straight from the point of intersection of the boundaries on one side to the point of intersection of the boundaries on the other side (*Moody* v. *Corbett*, *supra*). As to the effect of a subsequent Act extending the period limited for the sale of superfluous lands, see *ibid.*, and *G. W. Rail. Co.* v. *May*, *supra*. See further as to who are adjoining owners, *Smith* v. *Smith*, *infra*, and *Coventry* v. *L. B. & S. C. Rail. Co.* (1867), L. R. 5 Eq. 104; and cases cited under s. 128.

The passing of a subsequent Act, giving a company power to lease and mortgage certain superfluous lands, does not take away the original power of selling them possessed by the company (*Tomlin* v. *Budd* (1874), L. R. 18 Eq. 368).

In *Smith* v. *Smith* (1868), L. R. 3 Ex. 282, it was held that ss. 127, 128 do not apply where a railway has been abandoned.

The statutory rule established by this section has no application to lands acquired by voluntary agreement for "extraordinary purposes" (within the meaning of s. 38 of the Railways Clauses Consolidation Act, 1845, or ss. 12 and 13 of the Lands Clauses Consolidation Act, 1845) arising accidentally. The distinction is observable in the English as well as the Scottish enactments (*City of Glasgow Union Rail. Co.* v. *Caledonian Rail. Co.* (1871), L. R. 2 H. L. Sc. 160).

As to what is to be considered "superfluous land," see *Ware* v. *L. B. & S. C. Rail. Co.* (1882), 52 L. J. Ch. 198; *Mulliner* v. *Midland Rail. Co.* (1879), 11 Ch. D. 611; *Beauchamp* (*Earl of*) v. *G. W. Rail. Co.* (1868), L. R. 3 Ch. 745; *Carington* v. *Wycombe Rail. Co.* (1868), L. R. 3 Ch. 377; *L. & S. W. Rail. Co.* v. *Blackmore* (1870), L. R. 4 H. L. 610. See also *London and Greenwich Rail. Co.* v. *Goodchild* (1844), 13 L. J. Ch. 224; *L. & N. W. Rail. Co.* v. *West* (1867), L. R. 2 C. P. 553; *G. W. Rail. Co.* v. *May* (1874), L. R. 7 H. L. 283; *Betts* v. *G. E. Rail. Co.* (1879), 49 L. J. Ex. 197; *Horne* v. *Lymington Rail. Co.* (1874), 31 L. T. (N.S.) 167; *Searby* v. *Tottenham Rail. Co.* (1868), L. R. 5 Eq. 409; *Norton* v. *L. & N. W. Rail. Co.* (1879), 13 Ch. D. 268; *Macfie* v. *Callender and Oban Rail. Co.*, [1898] A. C. 270; *In re Duffy's Estate, McEvoy, Petitioner*, [1897] 1 Ir. R. 307; *Stewart* v. *Highland Rail. Co.* (1899), 16 Rettie, 580; and *Midland Rail. Co.* v. *Wright*, [1901] 1 Ch. 738.

The test appears to be this—are the lands retained by the company with the *bonâ fide* intention of using them? and is there at the expiration of the period for sale of superfluous lands, though the land in question is not in actual use, a reasonable prospect that it will be required and used for the purposes of the company? If the answer is affirmative, they are not "superfluous lands" (*Hooper* v. *Bourne and the G. W. Rail. Co.* (1880), 5 App. Cas. 1; distinguishing the *G. W. Rail. Co.* v. *May*, *supra*).

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The lands, when the period arrives at which they become superfluous, vest in the adjoining owner without any act on his part (*G. W. Rail. Co.* v. *May*, *supra*). The vesting takes place by force of the conditional limitation and not of a forfeiture (*Miller* v. *Waterford Harbour Commissioners*, [1904] 2 Ir. R. 421). As to the case of land being taken for a double line of rails only one line having been constructed and the rest of the land not having been fenced off and being used by the tenants of the adjoining land, see *Brown* v. *North British Rail. Co.* (1906), 43 S. L. R. 327.

Lands sold by a company as superfluous must be sold absolutely, without reserving any interest to the company (*L. & S. W. Rail. Co.* v. *Gomm* (1882), 20 Ch. D. 562); but the company may sell the land with a restrictive covenant for their own advantage as vendors (*In re Higgins' and Hitchmans' Contract* (1882), 21 Ch. D. 95). A railway company, on July 12th, 1867, conveyed certain superfluous lands, the period for the sale of which under their special Act expired on July 13th, 1867, and the conveyance contained a covenant by the purchasers that they would pay the purchase money on or before July 12th, 1869, with interest in the meantime, and by an indenture of even date and made between the same parties, it was declared that until the whole of the purchase money and interest were paid the company should have a lien on the deed of conveyance and the lands therein comprised:—*Held*, upon a summons under the Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), raising the question whether s. 127 had been satisfied, that having regard to expressions in the judgments of the Court of Appeal in *L. & S. W. Rail. Co.* v. *Gomm* (1882), 20 Ch. D. 562, to the effect that when land is sold as superfluous no interest in it can be retained by the company, the question was one of such doubt that it must be left open and not answered in a way which would force the title on a purchaser or prejudice the vendor's title (*In re Thackwray and Young's Contract* (1888), 40 Ch. D. 34). A railway company sold to a purchaser for a lump sum a plot of land which was not required by them for the purposes of their undertaking. The conveyance contained a covenant by the purchaser to resell a certain defined portion of such land to the company whenever he might be required by them to do so:—*Held*, by CAVE, J., that although such covenant to resell, being in contravention of s. 127, vitiated the sale of the portion of the land to which the covenant related, it did not affect the validity of the sale of the other portion (*Ray* v. *Walker*, [1892] 2 Q. B. 88). An Inclosure Act, passed in 1806, provided that no buildings should at any time thereafter be erected on a certain strip of land. In 1865, a railway company, under their statutory powers, acquired a portion of the strip of land for the purposes of their undertaking. A part of the land thus acquired became superfluous land, and the company in 1868 sold and conveyed the superfluous part to a purchaser, who demised it to the defendant. The defendant in 1885 commenced building on the land:—*Held*, that the land acquired by the company was freed from the prohibition of building only for the purposes of the company's undertaking, and that, when part of it was sold as superfluous land, the prohibition of building revived in respect of that part. An injunction to restrain the defendant from building on the land in contravention of the provisions of the Inclosure Act was granted at the suit of an owner of adjoining land (*Bird* v. *Eggleton* (1885), 29 Ch. D. 1012).

Sect. 23 of the Railway Companies Act, 1867 (30 & 31 Vict. c. 127), does not give to the holders of mortgages, bonds, or debenture stock of a railway company any lien or charge which they did not possess before that Act, so as to entitle them to payment in priority out of the proceeds of surplus lands of the company which have been sold on the application of the judgment creditors of the company (*In re Hull, Barnsley and West Riding Junction Rail. Co.* (1888), 40 Ch. D. 119). See *In re Ogilvie* (1871), L .R. 7 Ch. 174.

The question whether lands are superfluous is one of mixed law and fact; and an action to try it will be more conveniently tried without a jury (*Smith* v. *North Staffordshire Rail. Co.* (1881), 44 L. T. 85).

Exceptional provisions of some special Acts.

In many special Acts a clause has been inserted enacting that notwithstanding anything in the Lands Clauses Consolidation Act, 1845, the promoters may retain, hold, and use for such time as they may think fit, and may from time to time sell, lease, etc., land in such manner and for such consideration, and on such terms and conditions as they think fit.

Lands to be offered to owner of lands from which they were originally taken, or to adjoining owners.

128. Before the promoters of the undertaking dispose of any such superfluous lands they shall, unless such lands be situate within a town, or be lands built upon or used for building purposes, first offer to sell the same to the person then entitled to the lands (if any) from which the same were originally severed; or if such person refuse to purchase the same, or cannot after diligent inquiry be found, then the like offer shall be made to the person or to the several persons whose lands shall immediately adjoin the lands so proposed to be sold, such persons being capable of entering into a contract for the purchase of such lands; and where more than one such person shall be entitled to such right of pre-emption such offer shall be made to such persons in succession, one after another, in such order as the promoters of the undertaking shall think fit.

The right of pre-emption of superfluous lands under s. 128 is not confined to the proprietors from whom the company purchased, but devolves on future proprietors of the lands from which the purchased lands were severed. The words "lands situate within a town," in the same section, mean lands surrounded by the buildings which constitute the town, and therefore lands outside those buildings, although within the borough boundary, are not within the exception of the section, and the fact that a cottage stood upon a field, part of such superfluous lands was held not to bring them within the exception of "lands built upon, or used for building purposes" (*Carington* v. *Wycombe Rail. Co.* (1868), L. R. 3 Ch. 377). *Cf. Highgate Archway Co.* v. *Jeakes* (1871), L. R. 12 Eq. 9. The House of Lords have also decided that to bring lands within the exception in this section as "within a town," they must be encompassed by the buildings constituting the town (*L. & S. W. Rail. Co.* v. *Blackmore* (1872), L. R. 4 H. L. 610). Where a wall had been built on land dividing the property of an owner from that of the undertakers under an agreement whereby the land on which the wall was built became vested jointly in the owner and the undertakers, the owner is nevertheless an immediately adjoining owner within s. 128 (*ibid.*). So where a private road intervened (*Coventry* v. *L. B. & S. C. Rail. Co.* (1867), L. R. 5 Eq. 104). See further as to the meaning of the word "adjoining," *Hayes* v. *King*, [1893] 3 Ch. 439, and *In re Baroness Bateman and Parker's Contract*, [1899] 1 Ch. 599.

The mere fact of a railway company purporting to convey away lands acquired by them for the purposes of their undertaking is not conclusive to show that the lands are superfluous (*Hobbs* v. *Midland Rail. Co.* (1882), 20 Ch. D. 418). But a description in an advertisement of sale of lands as "superfluous lands" is sufficient to stamp the lands with that character (*L. & S. W. Rail. Co.* v. *Blackmore* (1872), L. R. 4 H. L. 610).

Land acquired by the A. railway company for the purposes of their undertaking was, within the period prescribed by statute for the sale by that company of their superfluous lands, compulsorily purchased by the B. railway company:—*Held*, that such compulsory sale afforded no ground for inferring that the land was not required by the A. company for the purposes of their undertaking, and was thus superfluous land within the Act of 1845, and accordingly that the right of pre-emption under s. 128 of that Act did not arise (*Dunhill* v. *N. E. Rail. Co.*, [1896] 1 Ch. 121).

Right of pre-emption to be claimed within six weeks.

129. If any such persons be desirous of purchasing such lands, then within six weeks after such offer of sale they shall signify their desire in that behalf to the promoters of the undertaking; or if they decline such offer, or if for six weeks they neglect to signify their desire to purchase

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Differences as to price to be settled by arbitration.

130. If any person entitled to such pre-emption be desirous of purchasing any such lands, and such person and the promoters of the undertaking do not agree as to the price thereof, then such price shall be ascertained by arbitration, and the costs of such arbitration shall be in the discretion of the arbitrators.

See s. 25, *ante*, p. 1174.

Lands to be conveyed to the purchasers.

131. Upon payment or tender to the promoters of the undertaking of the purchase money so agreed upon or determined as aforesaid they shall convey such lands to the purchasers thereof, by deed under the common seal of the promoters of the undertaking if they be a corporation, or if not a corporation under the hands and seals of the promoters of the undertaking, or any two of the directors or managers thereof acting by the authority of the body; and a deed so executed shall be effectual to vest the lands comprised therein in the purchaser of such lands for the estate which shall so have been purchased by him; and a receipt under such common seal, or under the hands of two of the directors or managers of the undertaking, as aforesaid, shall be a sufficient discharge to the purchaser of any such lands for the purchase money in such receipt expressed to be received.

Effect of the word "grant" in conveyances.

132. In every conveyance of lands to be made by the promoters of the undertaking under this or the special Act the word "grant" shall operate as express covenants by the promoters of the undertaking, for themselves and their successors, or for themselves, their heirs, executors, administrators, and assigns, as the case may be, with the respective grantees therein named, and the successors, heirs, executors, administrators, and assigns of such grantees, according to the quality or nature of such grants, and of the estate or interest therein expressed to be thereby conveyed, as follows, except so far as the same shall be restrained or limited by express words contained in any such conveyance; (that is to say,)

A covenant that, notwithstanding any act or default done by the promoters of the undertaking, they were at the time of the execution of such conveyance seised or possessed of the lands or premises thereby granted for an indefeasible estate of inheritance in fee simple, free from all incumbrances done or occasioned by them, or otherwise for such estate or interest as therein expressed to be thereby granted, free from incumbrances done or occasioned by them: **Sect. 132.**

A covenant that the grantee of such lands, his heirs, successors, executors, administrators, and assigns (as the case may be), shall quietly enjoy the same against the promoters of the undertaking, and their successors, and all other persons claiming under them, and be indemnified and saved harmless by the promoters of the undertaking and their successors from all incumbrances created by the promoters of the undertaking:

A covenant for further assurance of such lands, at the expense of such grantee, his heirs, successors, executors, administrators, or assigns, (as the case may be,) by the promoters of the undertaking, or their successors, and all other persons claiming under them:

And all such grantees, and their several successors, heirs, executors, administrators, and assigns respectively, according to their respective quality or nature, and the estate or interest in such conveyance expressed to be conveyed, may in all actions brought by them assign breaches of covenants, as they might do if such covenants were expressly inserted in such conveyances.

Land tax and poor's rate to be made good.

133. And be it enacted, that if the promoters of the undertaking become possessed by virtue of this or the special Act, or any Act incorporated therewith, of any lands charged with the land tax, or liable to be assessed to the poor's rate, they shall from time to time, until the works shall be completed and assessed to such land tax or poor's rate, be liable to make good the deficiency in the several assessments for land tax and poor's rate by reason of such lands having been taken or used for the purposes of the works; and such deficiency shall be computed according to the rental at which such lands, with any building thereon, were valued or rated at the time of the passing of the special Act; and on demand of such deficiency the promoters of the undertaking, or their treasurer, shall pay all such deficiencies to the collector of the said assessments respectively; nevertheless, if at any time the promoters of the undertaking think fit to redeem such land tax, they may do so in accordance with the powers in that behalf given by the Acts for the redemption of the land tax.

As soon as any part of the line is made and in work the company can claim to be assessed for that part as a line and not as if it were still land and houses, etc., as before (*East London Rail. Co.* v. *Whitechurch* (1874), L. R. 7 H. L. 81, overruling *R.* v. *Metropolitan District Rail. Co.* (1871), L. R. 6 Q. B. 698). The company are bound "to make good the deficiency"; and for this purpose the lands need not be rated and are not rateable (*London Corporation* v. *Churchwardens of St. Andrews, Holborn* (1867), L. R. 2 C. P. 574). See further, *Stratton* v. *Metropolitan B. of W.* (1874), L. R. 10 C. P. 76. Persons intrusted with the construction of public works under Acts which incorporate the Lands Clauses Act are "promoters" within s. 133 (*Wheeler* v. *Metropolitan B. of W.* (1869), L. R. 4 Ex. 303).

An urban sanitary authority, acting under statutory authority, took for the purposes of improvements lands situate in a number of parishes and liable to be assessed to the poor rate. In some cases all the land so taken

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was used in the construction of the roadways of new streets; but in omes cases more land was taken than was required for that purpose, so that the sanitary authority became possessed of surplus land which was vacant, unoccupied and unassessed. Such land was to be disposed of either by sale in fee simple or by the creation of rentcharges which were to be sold within a specified time, which had not expired when the rating authority brought an act ion to recover from the sanitary authority the amount of the deficiency in the assessment to the poor rate caused by the lands having been taken :—*Held*, that the works were completed within s. 133, so as to relieve the undertakers from the liability to make good the deficiency so caused, when the streets were fully made, and such of the lands taken as might be liable to assessment had become assessable. *Held*, also, that the deficiency was to be computed from time to time by comparing the assessed value at the time of the special Act of the lands taken with the assessed value at the time of computation of such of the lands taken as might have again become assessable. The authority to put in force the compulsory powers of the Lands Clauses Acts was conferred by a provisional order confirmed by a statute which described in one schedule, but under headings separately numbered, the several improvement schemes promoted by the sanitary authority :—*Held*, that each scheme described in the schedule constituted a separate undertaking, and that the deficiency in the assessment ought to be calculated on each separate undertaking within the rating area affected by it (*Governors, etc., of Poor of City of Bristol* v. *Bristol Corporation* (1887), 18 Q. B. D. 549).

The promoters of a railway company purchased houses beyond the limits of deviation from the line of the railway, in order to obtain the withdrawal of the opposition of the owners of such houses to the passing of the special Act. Some of the houses were unoccupied when acquired by the promoters. On a special case stated to ascertain the liability of the promoters in respect of the deficiency in poor rates :—*Held* (affirming the decision of the Queen's Bench Division), that as the promoters could only hold land under the powers given them by statute, they could not be heard to say that they had become possessed of the houses otherwise than by virtue of their Acts, and that they were, consequently, liable to make good the deficiency. *Held*, also, that as the statute directed that the deficiency should be computed according to the rental at which the houses were valued or rated at the time of the passing of the special Act, the fact that some of them were then unoccupied was immaterial in estimating the amount of the deficiency (*Overseers of Putney* v. *L. & S. W. Rail. Co.*, [1891] 1 Q. B. 440).

A borough rate (under 45 & 46 Vict. c. 50, s. 145) and the county rate (under 15 & 16 Vict. c. 81, s. 26) being respectively made chargeable on the poor rate the deficiency in the assessment for the poor rate which the promoters of the undertaking are liable to make good, includes any deficiency in respect of amounts raised for borough rate and county rate as well as any deficiency in the assessment for poor law purposes properly so called (*Farmer* v. *L. & N. W. Rail. Co.* (1888), 20 Q. B. D. 788).

By s. 10 (2) of the London Government Act, 1899, the general rate and the poor rate shall be assessed, made, and levied together by the Borough Council as one rate (which shall be termed the general rate), and shall be assessed, made, collected, and levied as if it were the poor rate. Upon the compulsory taking of lands in London, promoters, under s. 133, are only bound to make good the deficiency in so much of the general rate as represents the poor rate, or anything chargeable on that rate, and are not liable to make good the whole of the deficiency in the general rate (*Islington Borough Council* v. *London School Board*, [1903] 2 K. B. 354).

Under the words of a clause in the Great Northern and City Railway Act, 1892, it was sought by complaint before justices to make the promoters liable for consolidated, sewer and other rates on land which had had houses on it, but was vacant at the time the promoters acquired the land and also at the date when the rate was made. It was held that the remedy, if any, was by action, but it was thought that the section, which the court considered unintelligible, only meant that the deficiency which had been caused by the acts of the promoters should be made good (*Churchwardens, etc. of St. Stephen's, City of London* v. *G. N. and City Rail. Co.* (1902), 18 T. L. R. 350).

Where a landlord pays the rates and obtains a reduction of 25 per cent., the undertakers are not entitled to the reduction in computing the deficiency they must make up (*Shoreditch St. Leonard's Vestry* v. *London C. C.*, [1895] 2 Q. B. 104).

Under the corresponding section (127) of the Lands Clauses Consolidation (Scotland) Act, 1845, it was held that where a school board acquired land for the site of a school by voluntary purchase and without adopting the procedure prescribed by s. 31 of the Education (Scotland) Act, 1878 (41 & 42 Vict. c. 78), and obtaining a confirming Act, the school board were not liable to make good the deficiency in the poor rates caused by their having acquired the land (*Barony P. C.* v. *Glasgow School Board* (1895), Ct. of Sess. Cas., 23 Rettie, 221).

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Service of notices by company.

134. And be it enacted, that any summons or notice, or any writ or other proceeding at law or in equity, requiring to be served upon the promoters of the undertaking, may be served by the same being left at or transmitted through the post directed to the principal office of the promoters of the undertaking, or one of the principal offices where there shall be more than one, or being given or transmitted through the post directed to the secretary, or in case there be no secretary the solicitor of the said promoters.

The provisions of this section do not refer to actions only, but apply also to all cases where a summons or notice is required for any purpose (*Re South Yorkshire, Doncaster, etc. Rail. Co.* (1849), 7 D. & L. 36).

Tender of amends.

135. And be it enacted, that if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special Act, or any Act incorporated therewith, or by virtue of any power or authority thereby given, and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender shall have been made it shall be lawful for the defendant, by leave of the court where such action shall be pending, at any time before issue joined, to pay into court such sum of money as he shall think fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court.

See notes, *ante*, p. 213, and the Public Authorities Protection Act, 1893, set out, *ante*, p. 1062.

RECOVERY OF PENALTIES.

And with respect to the recovery of forfeitures, penalties, and costs, be it enacted as follows:

Cf. Companies Clauses Act, 1845, ss. 142—165, *ante*, pp. 1134 *et seq.*

Penalties to be summarily

136. Every penalty or forfeiture imposed by this or the special Act, or by any byelaw made in pursuance thereof, the recovery of which is

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recovered before two justices.

not otherwise provided for, may be recovered by summary proceeding before two justices . . .

Certain enactments of this section, now omitted, with regard to summary proceedings, as also ss. 137, 142, and 143 (so far as they relate to any matter to which the Summary Jurisdiction Acts apply) were repealed by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), as regards England. Sects. 144 and 146 from "for the county" to end of section and Sched. (C.) were also repealed. The provisions of the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), as amended by the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), with regard to the recovery of penalties, are substituted. By the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19), the said part of s. 136, and ss. 137, 142, 144, and Sched. (C.) are repealed altogether.

137. [*Penalties to be levied by distress.*]

See note to s. 136, *supra.*

Distress, how to be levied.

138. Where in this or the special Act, or any Act incorporated therewith, any sum of money, whether in the nature of penalty, costs, or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money, and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

Application of penalties.

139. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, to be applied in aid of the poor's rate of such parish, . . .

A portion of this section, which is omitted, is repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

Distress against the treasurer.

140. If any such sum shall be payable by the promoters of the undertaking, and if sufficient goods of the said promoters cannot be found whereon to levy the same, it may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the said promoters, and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence; and if such treasurer pay any money under such distress as aforesaid, he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the promoters of the undertaking coming into his custody or control, or he may sue them for the same.

Distress not unlawful for want of form.

141. No distress levied by virtue of this or the special Act, or any Act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser ab initio on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

142. [*Penalties to be sued for within six months.*]

Penalty on witnesses making default.

143. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction under the provisions of this or the special Act at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence.

By s. 4 of the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), this section was repealed so far as it relates to any matter to which the Summary Jurisdiction Acts apply.

144. [*Form of conviction.*]

See note to s. 136, *supra.*

Proceedings not to be quashed for want of form.

145. No proceeding in pursuance of this or the special Act, or any Act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by certiorari or otherwise into any of the superior courts.

Nevertheless, for any excess of jurisdiction, the proper remedy is *certiorari* (*Re Edmundson* (1851), 17 Q. B. 67; *R.* v. *Metropolitan Rail. Co.* (1863), 32 L. J. Q. B. 367; *Horrocks* v. *Metropolitan Rail. Co.* (1863), 4 B. & S. 315; *Penny* v. *S. E. Rail. Co.* (1857), 26 L. J. Q. B. 225; *R.* v. *Sheffield and Manchester Rail. Co.* (1839), 1 Rail. Cas. 537; *South Wales Rail. Co.* v. *Richards* (1849), 18 L. J. Q. B. 310; *R.* v. *Hatfield Peverel* (1849), 14 Q. B. 298).

Parties allowed to appeal to quarter sessions on giving security.

146. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special Act, or any Act incorporated therewith, such party may appeal to the general quarter sessions . . .

A portion of this section, which is omitted, has been repealed. See note to s. 136, *supra.*

Court to make such order as they think reasonable.

147. At the quarter sessions for which such notice shall be given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further

Sect. 147. satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

Receiver of the metropolitan police district to receive penalties incurred within his district.

148. Provided always, . . . that notwithstanding anything herein or in the special Act, or any Act incorporated therewith, contained, every penalty or forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any byelaw in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied, in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by an Act passed in the third year of the reign of her present Majesty, intituled "An Act for regulating the police courts in the metropolis," and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal and upon the same terms as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses, as he or they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned Act.

2 & 3 Vict. c. 71.

Certain words omitted were repealed by the Statute Law Revision Act, 1891 (54 & 55 Vict. c. 67).

Persons giving false evidence liable to penalties of perjury.

149. And be it enacted, that any person who upon any examination upon oath under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

ACCESS TO SPECIAL ACT.

And with respect to the provision to be made for affording access to the special Act by all parties interested, be it enacted as follows:

Copies of special Act to be kept and deposited, and allowed to be inspected.

150. The company shall at all times after the expiration of six months after the passing of the special Act keep in their principal office of business a copy of the special Act, printed by the printers to her Majesty, or some of them; and where the undertaking shall be a railway, canal or other like undertaking, the works of which shall not be confined to one town or place, shall also within the space of such six months deposit in the office of each of the clerks of the peace of the several counties into which the works shall extend a copy of such special Act, so printed as aforesaid; and the said clerks of the peace shall receive, and they and

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the company respectively shall retain, the said copies of the special Act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner and upon the like terms and under the like penalty for default as is provided in the case of certain plans and sections by an Act passed in the first year of the reign of her present Majesty, intituled "An Act to compel clerks of the peace for counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either House of Parliament."

7 Will. 4 & 1 Vict. c. 83.

See the provisions of this Act, *ante*, p. 432.

Penalty on company failing to keep or deposit.

151. If the company shall fail to keep or deposit, as hereinbefore mentioned, any of the said copies of the special Act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

Act not to extend to Scotland.

152. And be it enacted, that this Act shall not extend to Scotland.

See the Lands Clauses Consolidation (Scotland) Act, 1845 (8 & 9 Vict. c. 19).

153. [*Act may be amended, etc.*]

This section is repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

SCHEDULES REFERRED TO IN THE FOREGOING ACT.

SCHEDULE (A).

Form of Conveyance.

I , of , in consideration of the sum of paid to me [*or, as the case may be,* into the Bank of England [*or* Bank of Ireland], in the name and with the privity of the *accountant general of the Court of Chancery*,* ex parte "the promoters of the undertaking" [*naming them*], or to A. B., of , and C. D., of , two trustees appointed to receive the same], pursuant to the [*here name the special Act*], by the [*here name the company or the promoters of the undertaking*], incorporated [*or* constituted] by the said Act, do hereby convey to the said company [*or other description*], their successors and assigns, all [*describing the premises to be conveyed*], together with all ways, rights, and appurtenances thereto belonging, and all such estate, right, title, and interest in and to the same as I am or shall become seised or possessed of, or am by the said Act empowered to convey, to hold the premises to the said company [*or other description*], their successors and assigns, for ever, according to the true intent and meaning of the said Act. In witness whereof I have hereunto set my hand and seal, the day of in the year of our Lord .

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* See footnote, *ante*, p. 1204.

Sched. B.

SCHEDULE (B).

FORM OF CONVEYANCE ON CHIEF RENT.

I, of , in consideration of the rentcharge to be paid to me, my heirs and assigns, as hereinafter mentioned, by "the promoters of the undertaking" [*naming them*], incorporated [*or* constituted] by virtue of the [*here name the special Act*], do hereby convey to the said company [*or other description*], their successors and assigns, all [*describing the premises to be conveyed*], together with all ways, rights, and appurtenances thereunto belonging, and all my estate, right, title, and interest in and to the same and every part thereof, to hold the said premises to the said company [*or other description*], their successors and assigns, for ever, according to the true intent and meaning of the said Act, they the said company [*or other description*], their successors and assigns, yielding and paying unto me, my heirs and assigns, one clear yearly rent of , by equal quarterly [*or* half-yearly, *as agreed upon*] portions henceforth, on the [*stating the days*], clear of all taxes and deductions. In witness whereof I hereunto set my hand and seal, the day of in the year of our Lord .

SCHEDULE (C).

FORM OF CONVICTION.

Schedule (*C*) *is repealed by the Summary Jurisdiction Act,* 1884 (47 *&* 48 *Vict.* c. 43), *and by the Statute Law Revision Act,* 1892 (55 *&* 56 *Vict.* c. 19). *See note to s.* 136, *ante,* p. 1250.

LANDS CLAUSES CONSOLIDATION ACTS AMENDMENT ACT, 1860.

(23 & 24 VICT. c. 106.)

An Act to amend the Lands Clauses Consolidation Acts, 1845, *in regard to Sales and Compensation for Land by way of a Rent-charge, Annual Feu Duty or Ground Annual, and to enable her Majesty's principal Secretary of State for the War Department to avail himself of the Powers and Provisions contained in the same Acts.*

[20th August, 1860.]

The preamble and formal part are repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

1. [*Part of s.* 10 *of Act of* 1845 *repealed.*]

Repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

Sections 10 and 11 of recited Act as to power to sell, etc., lands for an

2. The power to sell and convey lands in consideration of an annual rentcharge provided by the tenth section of the said Act, and the power to recover such rentcharge provided by the eleventh section of the said Act, are hereby extended to all cases of sale and purchase or compensation under the said Act where the parties interested in such sale, or entitled to such compensation, are under any disability or incapacity, and have no power to sell or convey such lands, or to receive such compensation, except under the provisions of the said Act.

annual rentcharge, and to recover, extended to all sales, etc., where parties are under disability.

Similar proviso with regard to lands sold under s. 10 of 8 & 9 Vict. c. 19.

3. The power to sell and convey lands in consideration of an annual feu duty or ground annual, under the tenth section of the Lands Clauses Consolidation (Scotland) Act, 1845, and the power to recover such annual feu duty or ground annual, are hereby extended to all cases of sale or purchase or compensation under the said Act, where the parties interested in such sale are under any disability or incapacity, and have no power to sell or convey such lands, or to receive such compensation, except under the provisions of the said Act.

Amount of rentcharge to be settled in manner directed in the 9th section of recited Acts.

4. In every case of such sale or compensation by any parties other than parties seised in fee or entitled to dispose absolutely of the lands so sold or damaged, the amount of such rentcharge, annual feu duty or ground annual, hereinbefore mentioned, shall be settled in the manner directed in the ninth section of each of the said Acts respectively: Provided, that the amount of such annual rentcharge, annual feu duty or ground annual, shall in no case be less than one-fourth part greater than the net annual rent received by the parties beneficially interested in such lands, upon an average of the last seven years; and that a charge of five per cent. on the gross sum estimated or fixed as aforesaid by way of compensation for any damage that may be done to the said lands shall in all such cases be added to and shall form a part of the said rentcharge, annual feu duty or ground annual; and that no fine, forfeit, grassum, premium, or other consideration in the nature thereof, shall be paid or taken in respect of the lands so sold or damaged, other than the annual rentcharge, annual feu duty or ground annual, made payable for such lands: Provided also, that such rentcharge shall be and remain upon and for the same uses, trusts, and purposes as those upon which the rents and profits of the land so conveyed stood settled or assured at or immediately before the conveyance thereof and shall be a first charge on the tolls and rates, if any, payable under the special Act.

If lands purchased by way of rentcharge, borrowing powers to be reduced proportionally.

5. In case the promoters of the undertaking shall be empowered, by any Act or Acts relating thereto, to be passed after the passing of this Act, to borrow money to an amount not exceeding a prescribed sum, then in the event of the promoters of the undertaking agreeing at any time after the passing of this Act with any person, under the powers of this Act and of either of the Acts herein-before mentioned, or of either of the said Acts only, for the purchase of any lands in consideration of the payment of a rentcharge, annual feu duty or ground annual, the powers of the promoters of the undertaking for borrowing money shall be reduced by an amount equal to twenty years purchase of any rentcharge, annual feu duty or ground annual, so for the time being payable.

Certain clauses in

6. The clauses contained in the Lands Clauses Consolidation Act, 1845, relating to the purchase of lands by agreement, and to agreements

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8 & 9 Vict. c. 18, extended to purchases of land, etc., for public purposes.

for sale and conveyances, sales, and releases of any lands or hereditaments, or any estate or interest therein, by parties under disability, shall extend and be applicable to all purchases of land and hereditaments for public purposes which shall be hereafter made by the council of any city or borough, with the sanction of the . . . Treasury, under the powers for that purpose contained in the Municipal Corporation Mortgages, etc. Act, 1860.

Certain words omitted are repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19), and the same Act repeals the whole section, except as to Ireland. See the provisions of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 107.

Power to Secretary for War to use the powers given to promoters of undertakings by 8 & 9 Vict. c. 18.

7. For the purchase or acquisition of any messuages, lands, tenements, and hereditaments wanted for the service of the Admiralty or of the War Department or for the defence of the realm, it shall be lawful for her Majesty's principal Secretary of State for the War Department for the time being to use all or any of the powers and provisions by the Lands Clauses Consolidation Act, 1845, and by the Lands Clauses Consolidation (Scotland) Act, 1845, given to promoters of the undertaking, as therein mentioned; and for such purposes the said principal Secretary shall be deemed and taken to be the promoters of an undertaking within the meaning of the said Act and all the powers and provisions thereof shall, if used by her Majesty's principal Secretary of State for the War Department, be treated as if they were contained in the fifth and sixth Victoria, chapter ninety-four, for the purpose of being used and made available by the principal officers of her Majesty's Ordnance, and had been transferred to the said principal Secretary for the time being by the eighteenth and nineteenth Victoria, chapter one hundred and seventeen, for the purposes aforesaid: Provided always, that nothing herein contained shall authorise any purchase otherwise than by agreement of any land, except according to the provisions of the twenty-third section of the said Act of the fifth and sixth Victoria, or prejudice or affect the powers and authorities of the said principal Secretary for the time being under the said last-mentioned statutes or either of them.

This Act and 8 & 9 Vict. cc. 18 and 19 to be construed together.

8. This Act shall be read and construed as part of the said Lands Clauses Consolidation Act, 1845, or of the Lands Clauses Consolidation (Scotland) Act, 1845, in all matters in which it relates to the said Acts respectively; and in citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression of "The Lands Clauses Consolidation Acts Amendment Act, 1860."

LANDS CLAUSES CONSOLIDATION ACT, 1869.

(32 & 33 VICT. C. 18.)

An Act to amend the Lands Clauses Consolidation Act.

[24th June, 1869.]

The preamble and formal part are repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54).

1. [*Costs of arbitrations, where either party so requires, to be settled by a master of superior courts.*]

This section has been repealed by the Lands Clauses (Taxation of Costs) Act, 1895 (58 Vict. c. 11). See *post*, p. 1259.

2. [*Repeal of* 31 *&* 32 *Vict. c.* 119, *s.* 33 (*Regulation of Railways Act,* 1868).]

Repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39).

Provision respecting lands in Westminster.

3. Where any lands by the special Act authorised to be taken are situate within the city and liberty of Westminster, then, with respect to those lands, in every case in which any question of disputed compensation is required by the Lands Clauses Consolidation Act, 1845, or any Act amending the same, to be determined by the verdict of a jury, the high bailiff of the city and liberty of Westminster, or his deputy, shall be deemed to be substituted for the sheriff throughout such of the enactments of the Lands Clauses Consolidation Act, 1845, and any Act amending the same as relate to the reference to a jury.

Short title. Construction of Acts.

4. This Act may be cited as the Lands Clauses Consolidation Act, 1869, and shall be construed as one with the Lands Clauses Consolidation Act, 1845, and the Lands Clauses Consolidation Acts Amendment Act, 1860, and these Acts and this Act may be cited together as the Lands Clauses Consolidation Acts, 1845, 1860, and 1869.

LANDS CLAUSES (UMPIRE) ACT, 1883.

(46 & 47 VICT. c. 15.)

An Act to amend the Lands Clauses Consolidation Act, 1845.

[18th June, 1883.]

Preamble repealed by the Statute Law Revision Act, 1898 (61 & 62 Vict. c. 22).

Amendment of s. 28 of 8 Vict. c. 18, extending the power of appointment of umpire by Board of Trade.

1. . . . Section twenty-eight of the Lands Clauses Consolidation Act, 1845, . . . shall . . . be read and have effect as follows :

> **28.** If in either of the cases aforesaid the said arbitrators shall refuse or shall for seven days after request of either party to such arbitration neglect to appoint an umpire, the Board of Trade shall, on the application of either party to such arbitration, appoint an umpire, and the decision of such umpire on the matters on which the arbitrators shall differ or which shall be referred to him under this or the special Act shall be final.

Portion of s. 1 omitted repealed by the Statute Law Revision Act, 1898 (61 & 62 Vict. c. 22).

Short title.

2. This Act may be cited as the Lands Clauses (Umpire) Act, 1883.

LANDS CLAUSES (TAXATION OF COSTS) ACT, 1895.

(58 & 59 Vict. c. 11.)

An Act to amend the Law relating to the Taxation of Costs under the Lands Clauses Acts. [14th May, 1895.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Fees for taxing costs in compensation inquiries and arbitrations. 8 & 9 Vict. c. 18.

1.—(1.) Where under the Lands Clauses Consolidation Act, 1845, or any Act incorporating the same, any question of disputed compensation is determined by the verdict of a jury, or by arbitration, the costs of and incidental to the inquiry or to the arbitration and award (as the case may be), shall, if either party so requires, be taxed and settled as between the parties by one of the masters of the Supreme Court, and such fees shall be taken in respect of the taxation as may be fixed in pursuance of the enactments, relating to the fees to be taken in the offices of those masters; and all those enactments (including the enactments relating to the taking of fees by means of stamps) shall extend to the fees in respect of such taxation.

31 & 32 Vict. c. 119. 32 & 33 Vict. c. 18.

(2.) *Section forty-five of the Regulation of Railways Act*, 1868, *and section one of the Lands Clauses Consolidation Act*, 1869, *are hereby repealed.*

This section practically re-enacts s. 1 of the Act of 1869 which it repeals, with this addition, that it brings into the operation of the section the costs of inquiries before a jury (dealt with by ss. 51—53 of the Lands Clauses Act, 1845, *ante*, p. 1189), and extends to all costs the enactments in regard to payment of fees of taxation in stamps. Sect. 45 of the Regulation of Railways Act, 1868, repealed by the above section, related to fees on taxation of costs.

The following cases were decided under the repealed s. 1 of the Act of 1869: The court has no power to review the taxation, the master not being an ordinary taxing-master (*Owen* v. *L. & N. W. Rail. Co.* (1867), L. R. 3 Q. B. 54; approved in Court of Appeal, *In re Sandback Charity Trustees* (1877), 3 Q. B. D. 1; and *per* Lindley, L.J., in *Earl of Shrewsbury* v. *Wirral Railways Committee*, [1895] 2 Ch., at p. 815). Where a special agreement on the subject of costs was made between the parties, that section did not apply (*Wombwell* v. *Barnsley Corporation* (1877), 36 L. T. (n.s.) 708). The section did not apply to arbitrations regarding matters not coming within the Act of 1845 except by agreement (*Doulton* v. *Metropolitan B. of W.* (1870), L. R. 5 Q. B. 333); and see *Fitzhardinge* v. *Gloucester and Berkeley Canal Co.* (1872), L. R. 7 Q. B. 776.

There is now one taxing department for the King's Bench Division under the name of the Supreme Court Taxing Officer, and masters formerly belonging to either division can tax costs under this Act, and not only a former master of the King's Bench Division (*Carington* v. *Metropolitan District Rail. Co.*, [1903] 1 K. B. 231).

Where the amount of compensation payable to the owners of lands taken under the Lands Clauses Acts is settled by arbitration, and the taxed costs

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awarded to the owner, such costs become payable within a reasonable time, and the execution of the conveyance is not a condition precedent to payment of such costs (*Capell* v. *G. W. Rail. Co.* (1883), 11 Q. B. D. 345).

Upon a reference between a company and a landowner as to the value of land taken, if the umpire direct that the company should pay the costs of the award, including therein the costs of preparing the award, and the company take up the award and pay the umpire's fees, including those costs which were the costs of solicitors employed by him to draw up the award, the company can have the solicitor's bill taxed under s. 38 of the Solicitors Act, 1843 (*In re Collyer-Bristow & Co.*, [1901] 2 K. B. 839). As to recovering fees paid to an umpire in excess of the amount allowed on taxation, see *Llandrindod Wells Water Co.* v. *Hawksley* (1903), 19 T. L. R. 402). Where the costs of an arbitration for the assessment of compensation for land taken by virtue of an order made under the Light Railways Act, 1896, and incorporating the Lands Clauses Acts are referred to a master of the Supreme Court to be taxed, the taxing-master is acting under this Act and not under the Arbitration Act, 1889, and he therefore taxes as a *persona designata* and not as an officer of the court, and his taxation is not subject to review by the court (*In re Cannings, Ltd., and Middlesex C. C.* [1907] 1 K. B. 51). The object of sub-s. 2, *supra*, having been effected, it was repealed by the Statute Law Revision Act, 1908.

Short title.

2. This Act may be cited as the Lands Clauses (Taxation of Costs) Act, 1895.

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